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101st Congress
1st Session

SENATE

Report
101-19

FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 774

together with

ADDITIONAL VIEWS

April 13 (legislative day, January 3), 1989.—Ordered to be printed

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101st Congress
1st Session

SENATE

Report
101-19

FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989

April 13 (legislative day, January 3), 1989.—Ordered to be printed.

Mr. Riegle, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 774]

INTRODUCTION

On April 12, 1989, the Senate Committee on Banking, Housing, and Urban Affairs marked up and ordered to be reported a bill, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, to reform, recapitalize, and consolidate the Federal deposit insurance system and to enhance the regulatory and enforcement powers of Federal financial institutions regulatory agencies, and for other purposes.

The Financial Institutions Reform, Recovery, and Enforcement Act is a substantially revised version of a bill, S. 413, introduced in the Senate at the request of the Administration. The Committee vote was 21 ayes and 0 nays to adopt the bill and report it to the Senate for consideration as promptly as circumstances permit.

PURPOSE OF THE LEGISLATION

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the "FIRRE" Act) has two major purposes. First, the legislation seeks to recapitalize the Federal deposit insurance system and to provide for the resolution of outstanding and anticipated failures of insured institutions. Second, the legislation seeks to preserve a safe and stable system of residential housing finance.

The bill accomplishes these purposes by creating new administrative and financial structures for resolving failures, recapitalizing the insurance funds, and by proposing a wide range of regulatory reforms to promote the soundness and integrity of insured institutions and the deposit insurance funds.

1. Mission of the thrift industry

For over 50 years, the thrift industry has promoted home ownership through home mortgage lending. Today, thrifts are the nation's primary lenders in the housing finance market. According to the Department of Housing and Urban Development, thrifts (savings and loans and savings banks) originated nearly 54 percent of all mortgages nationwide through the third quarter of 1988. By contrast, during the same period, commercial banks and mortgage bankers accounted for 27 and 17 percent of all mortgage originations, respectively, while life insurance companies and financial institutions originated less than 2 percent of all mortgages. Savings and loans were also the largest holders of residential mortgages, with 35 percent of the nation's mortgage debt. Notwithstanding various deregulatory measures adopted by Congress and the Federal Home Loan Bank Board during the 1980's, mortgage assets continue to account for 70 percent of thrifts' asset portfolios, according to the General Accounting Office ("GAO").

2. Dimensions of the current crisis

Undeniably, however, the thrift industry is now in crisis. The number of insolvent thrifts has risen dramatically during the late 1980's. A variety of testimonial and documentary evidence assembled by the Committee indicates that hundreds of commercial banks and thrifts have failed during the late 1980's. Between 1980 and 1988, over 500 thrifts failed—more than three and a half times as many as in the previous 45 years combined. Hundreds more thrifts remain insolvent or appear likely to become insolvent. Although the number of bank failures is roughly comparable, the proportion of commercial banks that have failed is less. Moreover, the problem in the commercial banking industry is less severe because of the greater resources of its insurance fund, the Federal Deposit Insurance Corporation ("FDIC").

3. Cost of the crisis

Thrift failures have already cost the Federal Savings and Loan Insurance Corporation ("FSLIC") an estimated $78 billion this decade. In attempting to meet its obligations, FSLIC, which insures deposits maintained by the nation's thrift industry up to $100,000, has become insolvent and illiquid. And the crisis is far from over; the GAO estimates at least 338 thrift institutions, over ten percent of all thrifts were insolvent as of December 31, 1988, even though the FSLIC liquidated or merged over two hundred insolvent thrifts during 1988. Current estimates of the remaining cost to the Federal deposit insurance system of resolving the problem range from $50 billion to more than $150 billion depending on the time period and economic assumptions.

4. Need for emergency legislation

In this context, the proposed bill constitutes emergency legislation, presented to and considered by the Committee at a time of crisis in the Federal deposit insurance system and the thrift industry. President Bush has made reform and recapitalization of the deposit insurance system a top priority of his new administration. On February 6, the President announced a plan to reform and recapitalize the system. This plan formed the basis of legislation presented to Congress on February 22, 1989. Despite the monumental scale and complexity of the problems this legislation is intended to address, the Committee has expedited its consideration of the bill in view of the high priority attached to it by the President and the urgent need to staunch massive losses in the thrift industry.

a. Need for resolution and recapitalization

Numerous witnesses appearing before the Committee stressed the urgent need to recapitalize the deposit insurance system and to provide for expeditious resolution of failed thrift institutions. In early February, one witness told the Committee that insolvent thrift institutions then in operation were losing more than $500 million per month. Because they have little or no capital at risk, such institutions have few incentives to avoid high risk activities. There is a danger that such thrifts will do business on terms more prudent thrifts would neither offer nor accept. As a consequence, healthier institutions competing with such insolvent thrifts may find that they must either accept similar risk or lose business. It is virtually impossible for the regulators to contain this danger. Consequently, the continued operation of insolvent thrifts impairs the profitability of healthier institutions and the industry as a whole.

To recapitilize the deposit insurance system and provide for resolution of outstanding and anticipated failures of insured institutions the bill creates a new entity, the Resolution Trust Corporation ("RTC"), to serve as legal custodian of failed thrift institutions. The bill authorizes the RTC to retain the FDIC or other entities to manage its caseload. The bill also calls for the establishment of the Resolution Funding Corporation ("REFCORP") to raise funds for the RTC. REFCORP is authorized to issue up to $50 billion in long-term bonds to raise the funds needed by the RTC. The principal of these bonds will be paid by the thrift industry, through premiums paid by the thrifts and mandated contributions from the Federal Home Loan Banks. It appears likely that much of the interest on the bonds will be paid by the Federal Government.

b. Need for Reform

The Committee has listened carefully to those experts who, both in their testimony before the Committee and in the media, have questioned the continuing utility and viability of the thrift industry. On the whole, however, the Committee found most persuasive the testimony of those experts who concluded that good reasons to maintain a separate thrift industry still exist. Essential to that conclusion, however, is the assumption that the thrift industry will continue to play a distinct economic role, distinguishable from that fulfilled by the commerical banking industry, as the primary source of residential housing finance. Thus, former Federal Reserve Board Chairman Paul Volcker pointed out to the Committee that the most successful thrifts in the industry generally continue to concentrate on home mortgage lending. Mr. Volcker supported retention of a separate thrift industry, provided the industry continues to occupy a distinct market niche.

Nevertheless, the industry's deteriorating condition clearly demands substantial reform. Individuals testifying before the Committee alleged numerous possible causes of the widespread failures of insured institutions, including loss of capital resulting from the jump in interest rates in the late 1970's and early 1980's; forbearance and inadequate supervision by federal regulators; rampant fraud among owners and managers; severe weaknesses in energy, agricultural and real estate markets, especially in the Southwest; changes in the economic and technological environment that shifted the competitive balance among the different segments of the financial services industry; flaws in the process by which Congress and the regulators deregulated the thrift industry in the early 1980's; failure to prevent excessive risk-taking by State-chartered thrift institutions; flaws in the system of deposit insurance that gave risk to inadequate or perverse incentives for depositors and shareholders of thrift institutions, encouraging excessive risk-taking with federally insured deposits; and various combinations of these and other causes.

The Committee cannot determine which of these factors, or what combinations of these factors, truly caused the crisis, but the current system of regulation and supervision has many flaws that must be remedied by appropriate legislation. Accordingly, the proposed bill includes a variety of reforms addressed to several aspects of the current system of oversight and insurance. Among these reforms are major revisions in the supervisory and regulatory structures; limitations on the powers of State-chartered thrifts; an assortment of measures designed to curtail excessive risk taking by federally-insured institutions; specification of more exacting capital and accounting standards; limitations on commercial real-estate lending and direct investments; reductions in permissible loans to one borrower; and reductions in certain permissible loan-to-value ratios.

c. Concerns

The Committee believes that, in combination, these reforms will restore and preserve a system of Federal deposit insurance in which all depositors can justifiably take confidence. However, some areas of uncertainty necessarily remain and the Committee intends to monitor closely progress achieved in resolving the crisis over the next few years.

There is always the chance that additional funds could be needed to deal with the unhealthy portion of the thrift industry. Fluctuations in economic conditions could alter substantially the total cost of resolving the crisis, for better or worse. Additional deposit insurance charges imposed by the legislation on the thrift industry will help fund the cost of resolving the crisis but will also increase expenses for a troubled industry and could affect the competitive balance between thrifts and commercial banks. The asset disposition program demanded by this crisis, and established by this legislation, will be large by any standard. It is possible that alterations to the program for resolving the thrift crisis as set forth in this bill may be needed in the future. The Committee intends to pursue diligent oversight to ensure that any new or additional problems are addressed.

SUMMARY OF MAJOR PROVISIONS

1. New regulatory scheme

Under the current regulatory scheme, primary responsibility for regulation of the thrift industry resides with the Federal Home Loan Bank Board ("FHLBB", or "Bank Board"), which, under a complex arrangement, exercises its regulatory and supervisory powers primarily through employees of the regional Federal Home Loan Banks, but not through the Banks themselves. The regional Banks, in turn, are owned by the thrifts supervised by the FHLBB. Deposits maintained by these thrifts are insured by the FSLIC, which is itself under the administrative control of the FHLBB.

Several individuals testifying before the Committee faulted this arrangement and blamed it for some or all of the current problems in the thrift industry. In particular, these witnesses noted that the scheme entails a necessary conflict of interest between the FSLIC, charged with protecting the integrity of the deposit insurance fund, and the Bank Board, which many witnesses viewed as a promoter of the thrift industry. Compounding this problem, several witnesses felt that the FHLBB has been so close to the thrift industry that it lacked sufficient independence to competently perform its regulatory function.

The Committee believes these criticisms are well founded. The proposed bill responds to them in three ways. First, the bill removes the FSLIC from the administrative control of the FHLBB and places it under the administrative control of the FDIC. The new arrangement will not only ensure the independence of the insurance fund from the industry, but it will also provide large amounts of additional staff and expertise to the fund at a time when such resources are badly needed. Second, the bill removes the employees performing thrift regulatory functions of the Federal Home Loan Bank Board from the Banks and places them in a newly-created bureau (the Office of Savings Associations) within the United States Department of the Treasury. This removal should eliminate the potential conflict of interest inherent in the present arrangement.

Finally, the bill creates a new Federal Home Loan Bank Agency ("FHLBA") to ensure the Federal Home Loan Banks perform their credit function in a safe and sound manner so that this source of strength for home financing remains viable and well capitalized. To ensure that the FHLBA maintains an appropriate distance from the industry, the bill provides for the FHLBA to be governed by three experienced persons, who shall be appointed by the President to six-year terms.

As originally proposed by the President, the legislation would also have placed the functions of the FHLBA under the administrative umbrella of the Department of the Treasury. The Committee considered this proposal carefully, but rejected it. The Committee is concerned that, because the two entities are competitors in the capital markets, there is an inherent conflict of interest between the Treasury Department and the Federal Home Loan Banks. In view of this conflict, the Committee believes the most prudent course is to maintain the current administrative independence of the Federal Home Loan Banks and provide for a new and vigorous FHLBA to make this source of home financing independent from both political and industry pressures.

2. Financing

One of the major areas of debate over the last year has been the ultimate expense of resolving the savings and loan crisis. As noted above, the range of estimates has been large, depending on assumptions. However, it has long been clear that the price would be high and that the taxpayer would bear most of that cost.

The plan proposed by the Administration would provide $50 billion to fund the resolution of roughly 500 insolvent institutions between now and 1991 and up to $33 billion for the savings and loan insurance fund between 1991 and 1999. Over 30 years it would involve total expenditures of an estimated $260 billion in gross terms, including all interest payments and roughly $50 billion for expenses of the old FSLIC fund.

The Administration plan would be funded predominantly with public funds but with a considerable industry contribution, as well. Total net outlays scored in the budget during the first years would be only $60 billion using Administration assumptions and $70 billion assuming CBO interest rates and slower deposit growth. Increased bank deposit insurance premiums would offset roughly $20 billion of these outlays. The method used to spend such large sums while holding near-term on-budget costs at this low level has been a focus of the debate over this proposal.

The Administration would keep on-budget costs relatively low by requiring $50 billion for resolution of insolvent institutions in the next three years to be borrowed in the capital markets by a government-sponsored entity, the Resolution Funding Corporation ("REFCORP"). REFCORP would be owned by the Federal Home Loan Banks, which would pay the principal and part of the interest on its bonds. While Treasury would pay most of the interest on REFCORP bonds over their thirty-year life, REFCORP borrowing would not be considered government funding, and only Treasury's interest payments would be scored on-budget. This feature of the plan has been very controversial.

Considerable time and attention in Committee was devoted to finding an alternative formulation of REFCORP that would be funded with Treasury borrowing and consequently less costly to the taxpayer. The Committee considered placing REFCORP on-budget and fully funded by Treasury in FY 1989. The goal of this proposal was to eliminate the anticipated 30 basis point borrowing premium that REFCORP will likely pay over Treasury borrowing in an effort to save $150 million per year in financing costs. This plan promised $4.5 billion in gross savings over thirty years or roughly $1.5 billion in present value terms.

While the cost savings and on-budget scoring of this alternative were attractive to many members, there was dispute over whether projected savings would be realized and concern over budget precedents associated with FY 1989 financing. In addition, the Administration expressed strong opposition to an on-budget alternative. Altering REFCORP financing thus carried with it the threat that the bill could fail on the floor on a 60-vote budget point of order or face a veto.

Given the overriding concern of the Committee to put new funding and real reforms in place as quickly as possible, it was decided to adopt the Administration's funding mechanism. In so doing, the Committee has provided the Administration the full funding authority it requested to deal with the crisis at hand. As noted above, however, uncertainties over the scale of the problem remain, and the Committee intends to monitor closely the progress being made in resolving the crisis and the adequacy of resources for its resolution.

ORIGINS OF THE CRISIS

By all accounts, the causes of the crisis are multiple and complex. Testimony before the Committee highlighted three sets of factors that the Committee believes contributed substantially to the industry's decline. These factors include forbearance; major changes in the economic and legal environments; imprudent industry responses to deregulation, especially the increasing involvement of thrifts in risky, nontraditional activities; and fraud and insider abuse by thrift managers.

1. Changing conditions

Traditionally, thrifts earned their profits from the "spread" between the amounts of money they received as interest payments from borrowers and the amounts they were obliged to pay in interest to borrowers. From 1966 until 1980, the Federal Reserve Board's Regulation Q governed the amount of interest banks and thrifts could pay on deposits. In addition, until close to the end of this period, investors did not widely use the close deposit substitutes that the capital markets invented. In combination, the ceiling on interest rates imposed by Regulation Q and the slow adoption of alternative investments for depositors minimized the sensitivity of the nation's depositary institutions to interest rate fluctuations and helped virtually to guarantee their profitability.

In the late 1970's and early 1980's, however, several major developments in the financial and legal environments combined to substantially erode the thrift industry's more assured profitability. First, the growth of money market mutual funds, whose rates were not limited by Regulation Q, gave many investors a higher-yielding close substitute for deposits at banks and thrifts. Second, the high interest rates of that inflationary period—at times approaching or exceeding 20 percent—gave many investors a strong incentive to move their money from low-yielding banks and thrifts to higher paying investments, such as money market mutual funds. Large numbers of investors responded to this incentive, resulting in spectacular growth for money market mutual funds and unprecedented levels of withdrawals from banks and thrifts. Moreover, because thrifts have traditionally engaged in long-term mortgage lending, much of their portfolio was tied up in long-term loans at fairly low interest rates, while the cost of their funds increased dramatically.

2. Industry response to deregulation

Alarmed by the rate of disintermediation, the regulators began interest rate deregulation in 1978 and Congress in 1980 enacted the Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221) to restore the competitive position of thrifts and banks. The Act phased out interest rate ceilings for both bank and thrift accounts and allowed thrifts to diversify into areas previously reserved for commercial banks. In 1981, the FHLBB authorized federally chartered thrifts to make adjustable-rate mortgages. ("ARMS").

These measures did not suffice, however, to restore the thrift industry to profitability. Although thrifts could now retain deposits by paying higher interest rates than Regulation Q previously permitted, payment of higher rates, coupled with increasing reliance by many thrifts on market-rate advances from the Federal Home Loan Banks, significantly increased the industry's cost of funds. According to the GAO, during 1982 the thrift industry's cost of funds exceeded 11 percent while the average return on mortgage holdings was under 11 percent. As a result of this interest rate squeeze, the thrift industry lost $8.8 billion during 1981 and 1982, substantially reducing the industry's capital.

In 1982, in the face of continuing concern over the industry's plight, Congress enacted the Garn-St Germain Depository Institutions Act (P.L. 97-320). That act created some new competitive opportunities for federally chartered thrifts by increasing their ability to make commercial and consumer loans. It did not expand their authority to engage in direct real estate or equity investments, however, which had been authorized in earlier legislation for up to 3 percent of assets.

When Congress gave Federal thrifts additional powers in 1980 and 1982, some States followed the deregulatory model adopted earlier in Texas (which was then booming with the rise in the price of oil). These States extended the powers of their State-chartered institutions to enhance their profitability and discourage them from changing to Federal charters. California, for example, enacted a very liberal set of powers in 1983.

It is easy to make mistakes when exercising new powers. An institution may enter the market too late, get only those projects that the experts avoid, be deceived or even defrauded. The new powers enticed "fast buck" artists into the industry. Some who wanted to get rich quick, bought small thrifts, had them grow rapidly, and engaged in insider lending. The owner could line his pockets and leave a bankrupt thrift to the deposit insurer.

In other instances, thrifts that were approaching insolvency used the new powers which promised high returns to gamble toward recovery. But high returns involve high risk. The many that risked and failed left the bill to FSLIC.

Given these new asset powers, particularly in State-chartered institutions, thrifts aggressively expanded their assets to diversify into new investment areas. From 1982 to 1984, thrift assets grew by nearly 40 percent, a rate substantially higher than the growth rates of either the GNP or commercial bank assets during the same period.

Evidence presented to the Committee suggests that many thrifts were not merely aggressive but imprudent in their exercise of new investment powers, using insured deposits to finance questionable, high-risk ventures. Thus, David W. Gleeson, President of the Lincoln Asset Management Company, told the Committee that "the total asset base of Texas thrifts grew from $42 billion in 1982 to $100 billion in 1986, a 250 percent increase in 4 years. What started out to be aggressive growth, led to imprudent lending fostered by greed and ended in fraudulent, questionable, or irresponsible transactions in an attempt to cover all of the bad deals."

As the consequences of these imprudent and fraudulent investments came home to roost, the industry's rate of decay accelerated. Although only 21 FSLIC-insured institutions reported negative net worth under generally accepted accounting principles ("GAAP") in June of 1981, by March 1988, the number had ballooned to 500 institutions. Many thrifts found they could no longer make money from their interest rate spread. Moreover, the value of their fixed rate assets had declined precipitously leaving over 90 percent of the industry insolvent on a market value basis. Such thrifts often found themselves obliged to make loans, almost regardless of quality, simply to generate actual or reported fee income with which to meet current obligations or increase reported earnings. Indeed, a review of the most "profitable" institutions of 1984 reads like a roster of today's horror stories. Federal Reserve Chairman Alan Greenspan testified that "in many cases loans were made with an eye principally focused on front end fees and without any reasonable assurance of repayment."

Throughout this period, the FHLBB with Congressional consent responded to the industry's decline by deploying a consistent policy of forbearance toward capital deficient thrifts, reducing minimum capital requirements and permitting the development and use of regulatory accounting principles ("RAP") that served to artificially inflate the value of thrift capital. This policy was manifestly unsuccessful: despite forbearance, both the RAP and GAAP net worth of the thrift industry continued to decline. In February, 1987, the FHLBB announced it was unlikely to take administrative action to enforce minimum capital standards.

3. Fraud

Little doubt exists that fraud and insider abuse contributed substantially to the current crisis. According to the United States Department of Justice, the most prevalent forms of fraud and insider abuse included nominee loans, double pledging of collateral, reciprocal loan arrangements, land flips, embezzlement, and check kiting. In addition, witnesses have told the Committee of extravagant parties, exorbitant spending on frivolous corporate aircraft, lavish office suites, and numerous other squanderings of federally-insured deposit monies. "At the very least," related David W. Gleeson, President of Lincoln Asset Management Company, "there was an enormous failure of individuals to exercise their fiduciary responsibilities as managers, directors, auditors, appraisers, and lawyers. . . . The extent of irresponsible and questionable transactions was so pervasive, and reckless lending policies, wildly aggressive appraisals, and ludicrous deals were so widespread that each new round of transactions enticed the perpetrators on to larger, more complex, and more [creative] deals with an ever-increasing disregard for sound economics and market demand."

In his testimony before the Committee, United States Attorney General Richard L. Thornburgh estimated that fraud and insider abuse were involved in 25 to 30 percent of all savings and loan failures and caused over $2 billion in losses during 1988 alone. Other witnesses before the Committee estimated an even greater incidence of fraud and insider abuse.

4. Regional economic conditions

Inflation in the 1970's and the beginning of the 1980's was followed by a severe recession in 1981–82 and disinflation in commodity and producer prices. During the recession, the nation's manufacturing and agricultural sectors suffered. As the decade progressed, the manufacturing and agricultural industries recovered, but some producers of primary products, such as energy and metals continued to experience recession. These industries are heavily concentrated in the Southwest and Rocky Mountain regions.

The primary industries in these regions continued to decline after other sectors began to recover. Output and employment fell. Businesses became unprofitable and reduced their demand for plant, equipment and offices.

The primary industries most immediately affected by the regional recession laid off many of their workers. The unemployment rates in Louisiana, New Mexico, and Texas, just three of the States adversely affected by disinflation, have been substantially higher than that of the United States as a whole. In 1986, for example, the unemployment rate in Louisiana approached 14 percent, more than twice the national average. As a result, the Southwest and Rocky Mountain regions ranked lowest in personal income growth among the nation's eight regions in the period 1982 through September 1988. Unemployed and under-employed workers reduced their expenditures. The recession spread to retailers and home-builders.

Some of the businesses and workers most severely affected became unable to repay their debts. Many of their banks and thrifts failed as a result.

It should be noted, however, that not all bank and thrift failures can be blamed on regional economic problems. The Far West, which ranked second highest in economic growth among the regions, experienced a disproportionately large number of failures. Moreover, there were insolvent institutions in operation in 41 States in fall 1988.

HISTORY OF THE LEGISLATION

On August 10, 1987, President Reagan signed into law the long-delayed Competitive Equality Banking Act of 1987 (P.L. 100–86). Title III of that act entitled the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987, established a new corporation, the Financing Corporation. That Corporation was to be capitalized by the Federal Home Loan Banks and was to undertake a special financing program to recapitalize the FSLIC. The title authorized the Financing Corporation to borrow $10.825 billion to recapitalize the FSLIC, but limited the Corporation's annual borrowings to $3.75 billion. The Administration's original plan called for $15 billion to be raised.

On May 19, 25, and 26, 1988, the Banking Committee held oversight hearings on the condition of the financial services industry. Industry experts along with the regulators of banks and thrifts testified. On May 19, 1988, the Committee heard from five expert witnesses on conditions in the thrift industry and the adequacy of FSLIC's resources to deal with those problems, including Frederick D. Wolf, Director, Accounting and Financial Management Division, U.S. General Accounting Office; William C. Ferguson, CEO, Ferguson and Company, Irving, Texas; Bert Ely, President, Ely and Company, Alexandria Virginia; Stanley C. Silverberg, Special Consultant, Golembe Associates, Washington, D.C.; and Stuart Greenbaum, Strunk Professor of Financial Institutions, Graduate School of Management, Northwestern University. On May 25, 1988, representatives of each of the Federal banking regulators appeared before the Committee. These representatives included Robert L. Clark, Comptroller of the Currency; L. William Seidman, Chairman, Federal Deposit Insurance Corporation; and H. Robert Heller, Member, Board of Governors, Federal Reserve System. On May 26, 1988, the Committee heard from M. Danny Wall, Chairman, Federal Home Loan Bank Board.

Later in 1988, on August 2 and 3, the Committee held its final oversight hearings on the savings and loan industry during the 100th Congress. Administration and senior managers at important private thrift institutions came before the Committee on August 2, 1988. The witnesses included George D. Gould, Undersecretary for Finance, U.S. Department of the Treasury; Herbert M. Sandler, CEO, World Savings and Loan Association of Oakland, California; Gerald J. Levy, President, Guaranty Savings and Loan Association of Milwaukee, Wisconsin; and Donald Shackelford, Chairman, State Savings Bank of Columbus, Ohio.

On August 3, 1988, the Committee heard from a panel of three former Chairmen of the Federal Home Loan Bank Board, including Jay Janis, Chairman of the Board, Gibraltar Savings, Beverly Hills, California; Richard T. Pratt, Chairman, Merrill Lynch Mortgage Capital, Inc., New York, New York; and Edwin J. Gray, President and Chief Operating Officer, Chase Federal Bank, Miami, Florida.

While concerns about a growing crisis were voiced by some witnesses, there was no consensus opinion that urgent action was needed to recapitalize the FSLIC fund.

In October, 1988, the Congress adjourned until January, 1989. During the adjournment period, concerns mounted that FSLIC lacked sufficient resources to close failing thrifts and that, as a result, failed institutions were losing large amounts of insured deposits. Congressional concerns heightened in late December 1988, when the FHLBB arranged 34 assisted transactions involving 75 thrifts and billions of dollars in FSLIC notes, guarantees, and tax benefits as incentives to the acquiring institutions. The FSLIC used these notes, guarantees, and tax benefits because it did not have other resources available to close failed thrifts.

As soon as the new Congress convened and Committees were organized, the Banking Committee announced several weeks of hearings to examine every facet of the problems afflicting the thrift industry in order to develop legislation to resolve these problems.

The Committee held its first two hearings of the 101st Congress on January 31 and February 2, 1989. On January 31, the Committee heard from a very distinguished panel of experts from financial firms and the academic community. These witnesses included Andrew S. Carron, Vice President of Fixed Income Research, First Boston Corporation; Lowell L. Bryan, Director and Manager of Mortgage Research, McKinsey & Company; and Professor Paul M. Horvitz, Judge James A. Elkins, Professor of Banking and Finance, University of Houston.

On February 2, 1989, the Committee heard from the Honorable Charles A. Bowsher, Comptroller General of the United States, U.S. General Accounting Office.

On February 6, 1989, the day before the Committee's third hearing, President Bush announced that he would send the Congress a major reform and financing initiative to resolve the nation's savings and loan problems. Both the White House and the Department of the Treasury immediately issued information about the plan. Following the President's announcement, the Committee held hearings focused not only on problems afflicting the thrift industry, but also on the adequacy and impact of the President's proposed program for resolving these problems.

On February 7, 1989, the Committee heard from Paul A. Volcker, Chairman, James D. Wolfensohn, Inc., and former Chairman of the Board of Governors of the Federal Reserve System.

On February 9, 1989, the Committee heard from three witnesses who testified on the issue of fraud and the savings and loan problem. These witnesses, who presented comprehensive testimony regarding fraud problems in the industry, included Richard L. Thornburgh, Attorney General, U.S. Department of Justice; David W. Gleeson, President, Lincoln Asset Management Company; and H. Joe Selby of the Insignia Company, a former Deputy Comptroller of the Currency and former senior official at the Dallas Home Loan Bank.

On February 22, 1989, the Honorable Nicholas F. Brady, Secretary of the Treasury, presented to the Committee the Administration's proposal for solving the thrift crisis. That same day, the "Financial Institutions Reform, Recovery and Enforcement Act of 1989" (S. 413) was introduced in the Senate at the request of four members of the Senate Banking Committee. Twelve additional days of hearings followed the introduction of S. 413. From that day forward, testimony before the Committee focused on specific strengths and weaknesses of the proposed legislation.

On February 23, 1989, the Committee heard from Federal Reserve Board Chairman Alan Greenspan.

On February 28, 1989, the Committee heard from Federal banking regulators including L. William Seidman, Chairman, Federal Deposit Insurance Corporation; and Robert L. Clarke, Comptroller, Office of the Comptroller of the Currency. The next day, March 1, the Committee again heard testimony from M. Danny Wall, Chairman, Federal Home Loan Bank Board.

The Committee heard testimony on March 2, 1989, about the costs and financing mechanism of the President's proposal from Richard Darman, Director, Office of Management and Budget.

On March 3, 1989, the Committee heard from three witnesses concerned with the budgeting and financing aspects of the Administration's proposal. These witnesses included James Blum, Acting Director, Congressional Budget Office; Peter Treadway, Smith Barney; and William Ferguson, Chairman & CEO, Ferguson & Company.

On March 7, 8, and 9, 1989, the Committee heard from expert witnesses representing bank, thrift, and financial associations. Witnesses representing thrift groups on March 7, 1989, included Charles John Koch, Chairman, National Council of Savings Institutions; Mr. Barney R. Beeksma, Chairman, U.S. League of Savings Institutions; Kenneth D. Seaton, Vice Chairman, U.S. League of Savings Institutions; Professor Kenneth T. Rosen, Center for Real Estate & Urban Economics, University of California at Berkeley; and Jonathan E. Gray, Research Analyst, Sanford C. Bernstein & Co., Inc. On March 8, 1989, the Committee heard from members of the banking community, including Thomas P. Rideout, President, American Bankers Association; Jay O. Tomson, President, Independent Bankers Association of America; and William Haraf, Chairman, Issues Committee, Financial Services Council. More witnesses representing views of both bank and thrift organizations appeared on March 9, namely Charles J. Zwick, Chairman, Subcommittee on Legislative & Regulatory Issues, Association of Reserve City Bankers; Frank McKinney, Chairman, Association of Bank Holding Companies; and H.M. Osteen, Jr., Vice President, Association of Thrift Holding Companies.

On March 10, 1989, the Committee heard from representatives of the home building, real estate, and mortgage banking industries. These witnesses were Kent Colton, Executive Vice President, National Association of Home Builders; Jerome Blank, Chairman, Realtors Legislative Committee, National Association of Realtors; and Willard Gourley, Jr., President, Mortgage Bankers Association.

Representatives from consumer groups and credit unions testified on March 15, 1989. Consumer group witnesses were Peggy Miller, Legislative Representative, Consumer Federation of America; Michelle Meier, Counsel, Government Affairs, Consumers Union; and Robert L. Gnaizda, Public Advocates, Inc. Representing credit union organizations were Al Williams, Chairman, Credit Union National Association, Inc.; and Kenneth L. Robinson, President, National Association of Federal Credit Unions.

State regulators testified on March 16, 1989. These witnesses were Eugene W. Kuthy, Chairman, Michigan Financial Institutions Bureau, Conference of State Bank Supervisors; and John D. Seymour, Board of Directors, American Council of State Savings Supervisors.

The Committee held its final day of hearings March 17, 1989, when it heard from three distinguished industry executives namely Herbert M. Sandler, Chairman and CEO, World Savings and Loan Association, Oakland, California; Lewis Ranieri, Principal, Ranieri, Wilson, New York, New York; and Ernest M. Fleischer, Chairman, Franklin Savings Association, Ottawa, Kansas.

In total, to prepare itself to consider and report legislation to resolve the FSLIC crisis, the Banking Committee held 23 days of hearings during which it heard from over 50 witnesses.

SPECIFIC PROVISIONS

1. Restructuring of thrift industry regulation

a. The New Office of Savings Associations

The Chairman of the Office of Savings Associations ("COSA") will assume the regulatory functions of the Federal Home Loan Bank Board. The COSA will be under the authority of the Treasury Department. In contrast to the existing FHLBB, which has three members, the Office of Savings Associations will have a single chairman. All regulatory functions and rule-making authority for federally chartered and State-chartered thrifts will be vested in the COSA, except to the extent specific provisions of the bill create certain powers for the FDIC. For example, COSA will set the capital and accounting standards for thrifts, but the FDIC will have the power to review compliance with a business plan requiring capitalization of an existing investment in a thrift subsidiary.

In general, the structure of the Office of Savings Associations will parallel the structure of the existing Office of the Comptroller of the Currency. However, the Office of Savings Associations will be funded by assessments on thrifts. The Secretary of the Treasury will be prohibited from intervening in particular cases or enforcement actions of COSA.

To maintain the independence necessary to the proper performance of their offices, the COSA and the Comptroller shall be allowed to submit testimony to Congress and propose legislation without prior approval from the Secretary of the Treasury. In addition, COSA and the Comptroller shall not be subject to restrictions by review by the Office of Management and Budget. Further, the salaries of COSA and Comptroller staff are exempted from federal pay caps to allow COSA and the Comptroller to offer compensation competitive with other federal banking regulators. Although the regional Federal Home Loan Banks have never had statutory responsibility to regulate thrifts, they employ persons who acted as agents of the FHLBB. Those agents will now be employed by COSA.

b. The New Federal Home Loan Bank Agency

i. Independence from Treasury.—The new Federal Home Loan Bank Agency will succeed to the FHLBB's authority to supervise the Federal Home Loan Banks. The principal function of the Federal Home Loan Banks is to promote economical home financing by serving as lending facilities for their member institutions.

Treasury Department oversight of the credit functions of the Federal Home Loan Banks is undesirable because of the inevitable tension between the budgetary and macroeconomic policies of the Treasury Department and the Federal Home Loan Bank's mandate to facilitate economical home finance. Treasury control over the

Bank's housing credit function, or a significant threat of control could interfere with the Bank's mission of making loans to savings associations, and thereby ultimately with the availability of credit to home buyers. The Committee believes it preferable to create a new independent agency in the executive branch: the Federal Home Loan Bank Agency ("FHLBA"). The FHLBA will supervise and oversee the Federal Home Loan Banks and ensure that the Banks carry out their housing finance mission, remain adequately capitalized, and operate in a safe and sound manner.

Under the proposed legislation, the FHLBA's Board of Directors will consist of three persons appointed by the President and confirmed by the Senate. Members of the Board will serve six-year terms, and no more than two members may be from the same political party. The members should have extensive experience or training in housing finance. The Committee intends that the Agency be a small, effective and efficient governing body.

ii. Expanded Federal Home Loan Bank System Membership.—The Committee determined that current provisions of the Federal Home Loan Bank Act inappropriately preclude certain financial institutions from eligibility to become members and shareholders of the Federal Home Loan Banks. The Committee believes that certain banks and credit unions have demonstrated a commitment to residential mortgage lending and should be eligible to become shareholders of the banks. The Committee's bill therefore broadens the range of institutions eligible to become members and shareholders of the Banks, but makes eligibility contingent upon a demonstrated substantial commitment to housing finance. Specifically, the bill requires that, to become a member of a Bank after January 1, 1989, an insured institution must be a qualified thrift lender pursuant to section 10(e). Further, in the judgment of the FHLBA, the insured financial institution's financial condition must be sufficiently strong that the Bank may safely advance monies to the institution. Finally, the character of the institution's management and residential lending policies must comport with sound and economic home financing.

iii. Federal Home Loan Bank Directors.—Because the regulatory employees of Federal Home Loan Banks are being removed and placed into the Office of Savings Associations, the Committee saw no need to alter the basic structure of current law with respect to the election of Bank directors. The Committee believes, however, that additional consumer representation on the Banks' boards of directors is appropriate. In the last decade, the public interest directors of the Banks have not adequately represented the interests of small depositors and home buyers. Accordingly, the proposed legislation requires that two of the directors appointed by the FHLBA be selected based on their qualifications as representatives of consumer or moderate income community interest.

iv. Federal Home Loan Bank loans for the SAIF.—The Administration proposed that the Federal Home Loan Banks be required to make loans to the FDIC for the use of the Savings Association Insurance Fund, at the FDIC's direction. The Administration's bill did not, however, require that such loans be adequately secured. The Administration's bill also did not require that interest on Federal Home Loan Bank advances be payable at the Banks' current marginal cost of funds. The Committee's bill rectifies these omissions.

v. Advances.—To operate safely, soundly, and profitably, the Federal Home Loan Banks must make only fully collateralized advances, considering all appropriate lending risks, including credit, interest rate, and liquidity risks. The Federal Home Loan Banks' future earnings are important because Bank dividends represent a significant source of income to their members. Moreover, under the proposed legislation, a portion of Federal Home Loan Bank earnings will be diverted annually to help meet interest obligations on borrowings for insolvent thrift resolution. The bill permits the Federal Home Loan Banks to pay dividends to their members up to 80 percent of the Banks' net earnings, calculated without regard to the Bank's purchases of capital certificates in the Resolution Funding Corporation and the Financing Corporation. The bill also requires that long-term advances be made only for home financing purposes.

2. Qualified thrift lender test

a. Current law

The qualified thrift lender test (or "QTL test") is intended to measure a thrift institution's involvement in housing finance.

The test requires a thrift institution to hold 60 percent of its total tangible assets in: (1) loans, equity positions, or securities that are in some way related to residential real estate or mobile homes; and (2) premises, furnishings, and equipment used by the institution or its subsidiaries. Up to 10 percentage points of the 60-percent requirement may be met by counting: (a) liquid assets (e.g., money-market mutual funds and short-term, investment-grade corporate debt securities); and (b) a mortgage-origination credit.

As interpreted by FSLIC, current law gives QTL credit for assets that may have little to do with residential mortgage lending, such as: brokered deposits in other thrift institutions; offices—no matter how lavish, and regardless of whether the office has anything to do with residential mortgage lending; corporate jets used by thrift executives; equity investments in real estate, including raw land zoned for residential use; home-equity lines of credit (even if the proceeds are used to finance videocassette recorders or foreign travel); credit-card debt used to buy items for the home; bonds issued by the FSLIC Financing Corporation; and any other assets that FSLIC's staff regards as housing-related.

In addition, thrift institutions are allowed to use different accounting for the numerator of the QTL test (qualifying assets) than for the denominator (total tangible assets). Some assets that have appreciated in value are included in the numerator at market value but in the denominator at historic cost. Intangible assets (such as the value attributed to mortgage-servicing rights, purchased deposits, and branch networks) and leasehold improvements are included in the numerator but not in the denominator. Likewise, the assets of subsidiaries are included in the numerator but not in the denominator. This inconsistent accounting has the effect of watering down the QTL test.

Under FSLIC's regulations, thrift institutions must meet the current test on only 18 days out of every 3 years. This infrequent averaging facilitates manipulation.

b. Revised QTL test

Section 301 of the bill reenacts the current QTL test and increases the consequences of failing to comply. Effective July 1, 1991, section 303 revises the QTL test—maintaining the test at 60 percent but tightening the standard and making the test more rational.

i. Qualifying assets.—The revised test requires that at least 60 percent of a thrift's "portfolio assets" (as defined below) consist of the following assets related to residential mortgage lending:

(1) residential mortgage loans;
(2) residential construction loans;
(3) home improvement loans;
(4) home repair loans;
(5) mobile-home loans;
(6) mortgage-backed securities; and
(7) home equity loans, to the extent that the loans are used to purchase, refinance, construct, improve, or repair residential housing or mobile homes (the regulator will determine a general percentage to be used based on a survey of industry-wide patterns).

In addition, there is a mortgage-origination credit for one-half the dollar value of residential mortgage originated and sold during the last 90 days, which may count up to as much as 5 percentage points of the 60 point test. (This is similar to current law.)

If a loan finances both residential and nonresidential property (e.g., both apartments and a shopping mall), only the residential portion of the loan counts toward the QTL test.

Because home equity loans are often made for a purpose that is not related to residential housing, the Chairman of the Office of Savings Associations is required to determine annually the average portion of home equity loans made by savings associations that is used to purchase, refinance, construct, improve or repair residential housing or mobile homes. Savings associations may then count towards the QTL test that percentage of their home equity loans.

The bill is intended to refocus the QTL test and prevent the inclusion of other assets by regulatory interpretation.

ii. Portfolio assets.—The base against which the 60 percent of housing assets is measured is "portfolio assets." Portfolio assets consist of total assets minus:

(1) the thrift's own premises, furnishings, and equipment;
(2) liquid assets that regulators require the thrift to hold; and
(3) goodwill and other intangible assets.

Subtracting these three items from total assets ensures that they are treated neutrally: they do not count either towards the 60-percent requirement or against the remaining 40 percent.

iii. Consistent accounting.—The same accounting would be used for the numerator of the QTL test (qualifying assets) as for the denominator (discretionary assets). If a thrift institution counts the assets of a subsidiary towards the numerator then those assets will also count towards the denominator.

iv. Averaging.—To reduce the potential for manipulations the QTL test would be calculated using daily or weekly averages of a thrift institution's assets during the preceding 2 years.

v. Consequences of failing to comply.—Under the bill, a thrift institution that persistently fails the QTL test will not be eligible to receive Federal home loan bank advances and must eventually become a bank. In addition, as under current law, a unitary thrift holding company may conduct a broader range of activities if its subsidiary thrift institutions meet the test.

vi. Effect on industry impact.—According to statistics produced by both the Federal Home Loan Bank Board and the GAO, the effect of the new test on the thrift industry will be significant but not dramatic. For example, according to the Bank Board's statistics, 83 percent of the assets of the thrift industry are in institutions that pass the current test, while institutions with 76 percent of the industry's assets would pass the proposed test.

vii. Effective date.—The new QTL test will not become effective until July 1, 1991.

3. Changes in thrift powers

a. Changes in powers of federally-chartered thrifts

Like the Administration's proposal, the Committee's bill does not change the *types* of activities and investments permitted for Federal thrifts. There is a change, however, in the *amount* of permissible commercial real estate lending.

i. Lower commercial real estate loan limit.—Under current law, a Federal thrift may make commercial real estate loans of up to 40 percent of assets, regardless of whether the thrift has any capital at all. The proposed legislation changes the standard so that a Federal thrift may only make commercial real estate loans up to 4 times the thrift's capital. To illustrate, under a 6 percent minimum capital requirement, a thrift will be permitted to invest up to 24 percent of assets in commercial real estate loans. If the thrift has 10 percent capital it will be able to invest up to 40 percent of assets in such loans.

ii. Flexibility of limitation.—After some experience with the new requirement, COSA will have the authority to modify the standard consistent with safe and sound business practices, but only if such additional loans would not present a significant risk to the safe and sound operation of the association and the increased lending authority is consistent with prudent operating practices. If the Chairman permits lending in excess of the 400 percent limitation, he then must monitor the condition (including the lending activities) of the association.

The Committee expects that the Chairman would exercise this discretion sparingly. Investments in nonresidential real estate in excess of the new limitation set forth in this section could result in an overconcentration of the asset portfolio in an area that entails a greater-than-normal level of risk. Accordingly, a precondition for the Chairman's exercise of this discretion should be that the savings association is capitalized well in excess of the standards that will be in place on June 1, 1991. Only in this way would the association be positioned to take on the additional risk represented by this loan concentration in the asset portfolio.

iii. Rationale for the change.—Although current law places some limits on the amount that a savings association could lend for nonresidential real estate purposes, these limitations were not sufficient to prevent the high concentration of speculative real estate loans that were made recently by savings and loan associations. During the 1980's, many savings associations made loans to commercial real estate ventures in amounts that were inconsistent with sound policies regarding diversification of exposure. In addition to representing a disproportionate share of the loan portfolio, these loans were subject to the dramatic swings of highly volatile real estate markets. The combination of the speculative nature of these loans, the lack of expertise in making these types of loans, and the concentration of these loans in the asset portfolio was disastrous for many savings institutions.

For these reasons, the commercial real estate lending activities of many savings associations were decisive factors in their subsequent unprofitability or insolvency. There appears to be a high correlation between the percentage of an institution's assets dedicated to nonresidential real estate lending and the probability that such an institution will encounter financial difficulty. In numerous Bank Board press releases announcing savings and loan association failures, the financial difficulties leading to insolvency have been attributed to "over-concentration in commercial real estate," "unsafe and unsound commercial real estate lending" and "commercial construction and speculative land loans."

The revised restriction should ensure greater portfolio diversification—which is one of the keys to safety and soundness in the financial industry—and decrease the possibility that savings institutions (particularly weak institutions) will in the future rely so heavily on a sector of the market in which returns are highly variable.

iv. No Divestiture of existing loans.—Federal thrifts will not be required to divest any existing commercial real estate loan as a result of the new standard.

b. Changes in powers of State-chartered thrifts

There are 3 basic issues:

(1) What activities may a federally insured State thrift institution engage in *directly*, and on what conditions?

(2) What activities may the thrift institution engage in through a *subsidiary,* and under what restrictions? To what extent may depositors' funds be used in place of private capital to support the activities of the subsidiary?

(3) What firewall restrictions should be imposed to prevent *affiliates* of thrift institutions from putting federal deposit insurance at risk?

i. Activities conducted by State thrifts directly.—Under current law, State thrifts may engage in activities directly (rather than through a subsidiary) that are broader than the activities that federal thrifts are permitted to engage in directly. The proposed legislation imposes safeguards on these broader activities to protect the deposit insurance fund.

(A) General two-part test.—Under the bill, a State thrift could engage directly in a different activity, or in a greater level of a particular activity, than a federal thrift may engage in directly, only if two conditions are met.

First, the State thrift must have enough capital to satisfy the fully phased-in capital standard that will apply to thrifts by 1993.

Second, the FDIC must determine that the different activity or different level of activity does not pose a significant risk of loss to the deposit insurance fund. The Committee intends that the standard for assessing the significance of the risk of an activity is whether the activity may result in *any* loss whatsoever to the insurance fund. The significance standard does not relate to the relative or absolute size of potential losses that the insurance fund may suffer as a result of permitting the thrift to engage in the activity. Rather, the test is whether it is likely that permitting the activity to be carried on by a State thrift may cause any loss to the fund.

(B) Exception for agency activities.—The two-part test does not apply to broader agency activities permitted for State thrifts, because these activities are not risky.

(C) Exception for different levels of activity.—In general, a State thrift does not need prior FDIC approval under the two-part test to engage in a greater level of a particular activity than is permitted for a Federal thrift. The FDIC could still restrict the activity on its own, using the same test, and would be expected in any event to monitor these greater levels of activities by State thrifts. In addition, this exemption from prior approval would *not* apply to greater levels of activity in two areas permitted for Federal thrifts: investments in service corporations greater than the 3 percent limit; and commercial real estate lending above the new standard of 400 percent of capital.

(D) Direct real estate/equity investments prohibited.—Notwithstanding the two-part test, a State thrift, like a Federal thrift, is prohibited from engaging in direct real estate or equity investments. These activities are too risky to be funded by insured deposits. However, a thrift may engage in these activities through a separately capitalized subsidiary, as discussed in more detail below.

(E) Special rule for junk bonds.—As discussed below, junk bond investments are subject to a special rule, whether engaged in by a thrift directly or through a subsidiary.

(F) No divestment of existing loans or investments.—A State thrift that did not satisfy the two-part test would not have to divest any existing loans or investments.

ii. Restrictions on Direct Real Estate and Equity Investments.—The causes of the crisis in the thrift industry are many and varied. A major contributing factor, however, is the ability of institutions chartered under State law to assume unacceptable risks through the exercise of new and nontraditional powers granted under State law. These laws—enacted without regard to the potential harm to the Federal insurance fund—allowed State-chartered thrifts to make direct investments in real estate and in many other assets.

This authority was granted at a time when the thrift industry was in a seriously weakened condition. New investment powers were viewed as a way to permit thrift institutions to return to profitability by allowing equity ownership, which generally provides higher returns than lending, and diversification into other sectors where returns were viewed as better. Such authority did not, however, take account of the lack of expertise of financial institutions in managing, operating, or controlling businesses in other industries, or the incentive such authority created, especially for weak institutions, to gamble on speculative investments as a method of recovery.

The Committee considered at length the question of whether and to what extent the bill should require limitations on direct investments in real estate and equity by thrifts. Several witnesses at the Committee's hearing expressed concern about direct investments. Mr. Selby, for example, said that ". . . some of the institutions, some of them that have been mentioned today in Texas, had very large direct investments that contributed to their problems." Similarly, FSLIC staff expressed the opinion that direct investments or risky acquisition, development and construction loans have contributed to almost all of the failures the FSLIC has had to resolve. Many direct investments masqueraded as loans by having very high loan to value ratios and equity participation clauses. For example, the FHLBB's press releases on the failure of Gibraltar Savings Association and Height Savings Association, both of Houston, blamed the failures on "direct investments in speculative ventures."

Thrifts that are insolvent or approaching failure can remain liquid and keep operating because deposit insurance protects their customers (at least their insured depositors) from loss. Such severely troubled institutions have incentives to use the funds they receive to gamble on recovery. Some firms hope to profit from investing in projects that promise high returns. In general, direct investments offer higher returns than lending.

But the higher returns promised by direct investment are not a free lunch. The market demands a price for such returns: high risk. Although some investors profit handsomely from direct investments, many others lose heavily. In good years, most projects succeed, but in bad years many projects fail. The real estate markets, particularly the commercial real estate markets, have followed this pattern in recent years. Returns have been highly variable across the country and over different time periods.

Because of the risk associated with direct investments, banks and thrifts generally have little or no ability to make equity investments. Federally chartered thrifts, for example, may not make direct investments in real estate. Some States, however, have allowed their thrifts to make equity investments, and many thrifts in those States have seized the opportunity to become heavily involved in such investment activities. According to testimony before the Committee, State-chartered thrifts have made direct investments in a wide range of non-traditional investments, including windmill farms, fast food franchises, toxic waste dumps, and stud farms. There can be no doubt that unsuccessful investments of this type have been a major cause of the losses in the thrift industry.

In addition to ordinary market risks of such investments, thrifts face additional risk because they lack expertise in businesses so far removed from their core lending business. Without such expertise, a thrift may inadvertently enter the market too late, invest in unsound or fraudulent projects, or make managerial errors.

The risks of direct equity investments to thrifts are amply demonstrated by available data. While the thrift industry as a whole was unprofitable last year, the condition of thrifts without direct investments (over three quarters of the industry) was better than those with direct investments. Those without direct investments had 4.4 percent GAAP capital and broke even. As the data in Table I show, profitability varied inversely with the percentage of assets directly invested.

TABLE I.—DIRECT INVESTMENTS [1] REAL ESTATE AND OTHER ASSETS

Percentage of assets	Number of thrifts	Percentage		GAAP capital	Return on assets
		Unprofitable	Insolvent		
Over 20	8	87.5	75.0	(69.7)	(31.3)
10 to 20	14	85.7	57.1	(11.3)	(5.6)
5 to 10	42	53.7	34.1	(0.5)	(2.9)
0 to 5	629	40.9	23.4	2.2	(0.8)
0	2,331	2.5	11.1	4.4	0.0
All S&Ls	3,024	27.6	14.3	3.0	(3.2)

[1] Direct investment includes real estate held for development and nonresidential property.

Source: Staff analysis using Federal Home Loan Bank Board data.

Last fall, for example, the eight thrifts that had more than 20 percent of their assets in direct investments had a GAAP capital deficiency of 70 percent of total assets and were losing money at the extraordinary rate of 31 percent annually. The FHLBB's broader study of direct investments found a statistically significant correlation between the amount of direct investment activity at a failed thrift and the eventual cost of the failed thrift's resolution. Thus, in a fundamental sense, thrifts that make such investments are gambling, and gambling with Federally insured deposit.

(A) Prohibited within thrift.—Section 223 specifically prohibits a State-chartered thrift institution from acquiring or retaining any equity investment of a type or in any amount not permissible for a Federal thrift. This prohibition is intended to include any type of equity investment including common stock and preferred stock (whether voting or non-voting), options, warrants, and interests in partnerships (whether general or limited).

(B) Transition rule.—A State thrift that currently engages directly in such equity investments must divest itself of the investment as quickly as the FDIC deems prudent, with an outside limit of five years from the date of enactment.

iii. Restrictions on corporate debt securities not of investment grade

(A) Current law for Federal thrifts.—A Federal thrift's investment in corporate debt securities that are not of investment grade (commonly referred to as "junk bonds") is limited to 11 percent of assets under current law. National banks, by contrast, are prohibited from investing in junk bonds.

(B) Capital requirement.—Under the proposal, a State thrift may not maintain more than 11 percent of its assets invested in junk

bonds (whether directly or through a subsidiary) unless it has enough capital to satisfy the new, fully phased-in capital standards that will apply to thrifts as of 1993.

(C) Application to FDIC.—In addition, a State thrift must apply to the FDIC within 90 days of the date of enactment for permission to maintain more than 11 percent of its assets in junk bonds.

(D) FDIC determination.—Within 10 months of the date of enactment, the FDIC must determine whether an institution's investment in junk bonds exceeding 11 percent of assets constitutes a significant risk to the deposit insurance fund. It may make this determination on a case-by-case basis or by regulation. In making the determination, the FDIC should consider, among other relevant facts, the risks and returns on such investment, the institution's capital ratios, and its management expertise and past performance in such investments.

(E) FDIC restrictions.—If the FDIC determines that any part of a thrift's junk bond investment does pose a significant risk of loss to the fund, it may require that part to be sold, separately capitalized, transferred to a separately capitalized subsidiary, or otherwise restricted.

(F) Transition rule.—The bill would not require a thrift to divest or separately capitalize any part of its junk bond portfolio during the time in which the FDIC is making its determination. In addition, a transition rule applies to a thrift that must divest or take a similar action as a result of the FDIC's determination. Beginning a year after date of enactment, the thrift will have four years to comply, achieving 25 percent compliance each year.

iv. Separate capital rule for subsidiaries

(A) Separate capital rule.—If a thrift's subsidiary is engaged in activities that are not permissible for a national bank, both the Administration's proposal and the Committee's bill require that the subsidiary be separately capitalized (i.e., that the thrift's investment in the subsidiary not be counted as part of the thrift's own capital). This requires that impermissible activities be funded with private capital, rather than insured deposits. Examples of such impermissible activities are equity investments, insurance underwriting, and (depending on the FDIC's determination) junk bond investment.

(B) Rationale.—The separate capital requirement prevents double leveraging, a practice in which the same capital supports the operation of both the parent and the subsidiary.

By definition, capital requirements establish the minimum levels of capital at which the thrift's traditional deposit and loan activities can be safely and soundly conducted, with minimum risk to the deposit insurance fund. That capital, which is there to absorb losses at the thrift and protect the deposit insurance fund, should not be diverted to support risky nonbanking activities. Including the capital that is at risk in subsidiaries in the depository institution's consolidated capital amounts to a form of double counting. If the capital is lost in the subsidiary, it is not available to support losses in the thrift organization and the federal safety net is directly put at risk.

It is necessary for effective implementation of the capital standards that separate capital be required for any subsidiary engaged in activities not permitted for a national bank. The bill requires that the capital standards for thrifts should be no less stringent than those applicable to national banks. If the capital deduction were not required for nonconforming activities, a thrift institution would functionally operate with less capital than a bank of the same size because the thrift would have greater risk in its operations.

Separate capitalization is not required for agency activities, even if such activities are not permissible for a national bank. Consequently, the separate capitalization requirement chiefly affects those activities carried out as principal through service corporations and which are typically of higher risk than other activities. These activities would include securities activities, insurance underwriting, and real estate development. All of these activities carry risk that is different from that of lending. Therefore, if the thrift chooses to engage in these activities, the thrift should have capital over and above what is necessary to support its traditional activities.

Experience has already demonstrated that thrifts can suffer major losses by engaging in real estate development. Losses require an immediate deduction from capital. If a savings association decides to engage in one of these types of activities through a subsidiary, the subsidiary should have its own capital on which to operate and should not be permitted to leverage the capital of its parent insured institution. Without separate capital, the deposit insurance fund would once again be exposed to the risk of loss occasioned by the conduct of high-risk activities subsidiaries, whereby the subsidiaries may drain off capital that is needed to support the operations of the insured thrift institution itself.

(C) Change from administration proposal.—The Committee's bill is less stringent than the Administration's proposal because it makes exceptions for agency activities and junk bonds. Agency activities are excluded because they are not risky. Junk bonds are subject to a special rule, as discussed above. If (directly or through a subsidiary) a thrift's total junk bond investments do not exceed 11 percent of its assets, it need not separately capitalize the investments made through the subsidiary: if the FDIC approved, additional junk bond investments could be made without requiring separate capitalizations.

(D) Five-year transition rule.—A thrift will have five years from the date of enactment to comply with the separate capital rule. Until June 1990, the thrift may include in its capital 100 percent of its investment in the subsidiary; from July 1990 through June 1991, 90 percent; from July 1991 through June 1992, 75 percent; from July 1992 through June 1993, 60 percent; and from July 1993 through June 1994, 40 percent. The FDIC would have discretion to require a given thrift institution to achieve more rapid compliance with the separate capitalization requirement if, under the circumstances, slower compliance would be an unsafe and unsound practice.

c. Affiliate firewall restrictions

The Administration's bill proposed changes in the treatment of transactions between a thrift and its affiliates. The Committee agrees that changes in this area are desirable, but has chosen to adopt a more stringent approach.

i. Current law.—A thrift cannot make any investment in an affiliated company, and it generally cannot engage without the FSLIC's approval in transactions with affiliates that involve purchasing, selling, or leasing assets. The exception is for transactions with an affiliate that engages only in activities that are permissible for a bank holding company. In such cases, the transactions are permissible under the standard applicable to banks, which is discussed below.

ii. The Administration's proposal.—The Administration's bill would have applied the bank standard to *all* transactions between a thrift and its affiliates. This standard is set forth in sections 23A and 23B of the Federal Reserve Act. This standard is, in some respects, more permissive than the standard that applies to thrifts under current law, in part because affiliates of banks can engage in a much narrower range of activities than thrift affiliates. (In general, a thrift can be affiliated with any company, no matter what its activities.)

iii. sections 23A and 23B.—Section 23A of the Federal Reserve Act limits the amount that a bank can loan to an affiliate to 10 percent of capital; it limits the total of all transactions with affiliates to 20 percent of capital; and it requires that all extensions of credit to an affiliate be fully secured. Section 23B further requires that transactions between a bank and its affiliates be on terms at least as favorable to the bank as comparable transactions with third parties.

iv. New standard.—The bill applies the provisions of sections 23A and 23B of the Federal Reserve Act to every savings association in the same manner and to the same extent as if that savings association were a member bank. The Chairman of the Office of Savings Association may impose more stringent requirements on affiliate lending by a savings association, but cannot exempt transactions from the provisions of sections 23A and 23B.

The bill limits further the types of transactions permissible between a savings association and its affiliates by permitting only loans and extensions of credit to an affiliated company; it specifically prohibits any other type of investment or transaction, including purchases of assets, otherwise covered by or described in sections 23A or 23B. In addition, section 11(a) permits loans or extensions of credit only to savings association affiliates that engage in activities that are permissible under 4(c)(8) of the Bank Holding Company Act. The definition of an affiliate in section 23A is carried over into the bill.

Notwithstanding COSA's authority to prescribe more stringent standards, a savings association may purchase or participate in a loan originated by an existing mortgage banking affiliate to the same extent that a member bank could engage in such transactions consistent with 12 C.F.R. 250.250.

Sections 23A and 23B are two of the most important prudential limits in federal banking law. Transactions with affiliates present a vehicle for transferring the benefits of deposit insurance to nonbanking, nondepository affiliates, and for transferring greater risk to banks and savings associations affiliated with nonbanking companies. The basis for the restrictions in sections 23A and 23B is the danger that will not act at arm's length when extending credit for benefit of its affiliates. Sections 23A and 23B are self-executing, and do not require the promulgation of regulations before they become fully effective.

Because of the crucial importance of the prudential limits established by sections 23A and 23B, it is appropriate that authority for granting exemptions from these provisions be vested in a single agency responsible for uniform interpretation or these provisions, without the possibility for fragmentary and conflicting agency interpretations. Furthermore, this is not an area where there is room for any competition in laxity. Accordingly, the Federal Reserve Board has sole authority for issuing regulations or orders pursuant to these sections, including making determinations that certain transactions or relationships should be subject to section 23A or 23B. In granting exemptions under these provisions, the Board may distinguish between banks and savings associations if the situation warrants.

4. Capital standards

a. In General

i. S. 413.—The bill requires that thrift capital standards be no less stringent than the capital standards that apply to national banks, but it also permits deviations that do not result in materially lower capital standards for thrifts than national banks. In addition, the bill allows the inclusion of goodwill as a component of capital, which is generally not permitted for national banks (see discussion below). The new capital standard is to be fully phased-in by June 1, 1991.

ii. Two capital standards apply.—The capital standard that will apply to national banks in 1991 is actually the greater of two standards. The first is the risk-adjusted standard, which requires banks that hold assets with greater credit risk to have more capital than banks with assets with lesser credit risk. The second is the leverage ratio, which is a flat percentage of capital to total assets.

iii. Leverage ratio as absolute minimum.—The leverage ratio that applies to thrifts will be no less stringent than the leverage ratio that applies to national banks; no deviations to lessen this standard will be permitted.

iv. Risk-adjusted ratio may deviate.—The risk-adjusted ratio that will apply to thrifts may deviate from the risk-adjusted standard that will apply to national banks, especially to take into account interest rate risk. But the thrift risk-adjusted standard, taken as a whole, may be no less stringent than the national bank risk-adjusted standard.

v. The 1991 deadline remains in place.—As in S. 413, the deadline for meeting the new thrift capital standard will be June 1, 1991. But additional capital restrictions apply both before and after that date.

vi. Pre-1991 capital restrictions.—Between now and 1991, thrifts that fail to meet their capital requirements have an incentive to grow and engage in risky activities in order to build capital quickly. To address these problems, the COSA will maintain discretion to limit any asset growth of such thrifts. In addition, such thrifts will be required to submit a new business plan for increasing capital that is acceptable to the thrift regulator.

vii. Pre-1991 business plan for increasing capital.—The business plan must describe the types of activities the thrift intends to engage in to increase capital, and it must provide that any asset growth will be fully supported by tangible capital under the capital standard in effect. A thrift that violates its business plan will be subject to the full range of enforcement measures provided by existing law and this bill.

viii. Post-1991 capital restrictions.—The Administration proposed to prohibit thrifts failing to meet the new capital standard in 1991 from all asset growth. This is too inflexible. The bill will permit very limited growth under very limited circumstances as described below.

ix. Post-1991 growth limited to interest credited.—COSA may *permit* asset growth by undercapitalized thrifts up to a maximum amount equal to interest credited on deposits. At current interest rates this translates to a maximum of 5 to 7 percent annual asset growth. But COSA may in its discretion limit or stop this growth altogether.

x. Post-1991 growth permitted only in less risky assets.—An undercapitalized thrift may only grow in traditional, less risky thrift assets. These consist of assets that qualify for the qualified thrift lender test and consumer loans.

xi. Post-1991 growth must be fully capitalized.—The limited growth permitted for an undercapitalized thrift must generally be supported by 6 percent tangible capital. However, if the capital standard in effect at the time would otherwise require less tangible capital, COSA may in its discretion apply that standard instead.

b. Goodwill

i. 25-Year grandfather period.—Goodwill shall have a maximum amortization period of 25 years for purposes of determining compliance with capital standards. The bill makes no distinction between so-called "supervisory" goodwill and any other form of goodwill.

ii. Fully capitalizes asset growth.—An institution that meets its capital standards only by counting goodwill must fully support any asset growth with tangible capital. This tangible capital may be required to be as much as 6 percent of assets, but may never be less than the minimum level required under the new capital standard.

iii. Goodwill in prospective acquisitions.—Any goodwill, whether it arises from an assisted or unassisted transaction, that is created in a merger or acquisition consummated after April 12, 1989, shall not be counted for purposes of determining compliance with any capital standard promulgated or enforced by any Federal banking regulatory agency. The bill makes a narrow exception in the case of a thrift merger for which a completed application was filed and received by the FHLBB on or before March 12, 1989, if such merger or acquisition is later consummated in accordance with all the material terms and conditions of the original application. This narrow exception gives the new COSA limited discretion to include goodwill in determining capital adequacy.

c. *Early intervention rule*

The early intervention provision, section 913 of the FIRRE Act, provides the FDIC with new procedures for suspending deposit insurance for any institution which has no tangible capital. These expedited procedures will allow the FDIC to suspend deposit insurance, without a prior administrative hearing, but subject to judicial review under the arbitrary or capricious standard.

When determining the tangible capital of savings associations, the FDIC is to include goodwill, but only to the extent that such goodwill is considered a component of the association's capital under section 5(t) of the Home Owners' Loan Act. Any association which would have no tangible capital, but for the inclusion of this goodwill, will be considered a special supervisory association.

While the FDIC may not suspend insurance based on the lack of tangible capital for a special supervisory association, the agency is given enhanced supervisory authority over the institution. First, it is the Committee's intent that the association enter into a capital improvement plan with both COSA and the FDIC. Further, the FDIC is authorized to suspend deposit insurance for such an association, utilizing the same expedited procedures as would apply to other insured financial institutions, if it determines that (1) the association's capital level has suffered a material decline after the date of enactment of the FIRRE Act; (2) the association, or its directors or officers, is engaging in an unsafe or unsound practice; (3) the association is in an unsafe or unsound condition; (4) the association, or its officers or directors, has violated any applicable law, rule, regulation, or order, or any condition imposed in writing by any Federal banking agency, or any written agreement with any Federal banking agency, or that the association has failed to enter into a capital improvement plan which is acceptable to the FDIC. Further, in light of the risk posed to the insurance fund by these special supervisory associations, the FDIC is directed to conduct a thorough examination of these institutions within 3 months of the date of enactment of the FIRRE Act, and on a quarterly basis thereafter.

It is important to note that these new procedures for suspension of insurance are in no way intended to restrict or limit the FDIC's current authority to terminate deposit insurance under section 8(a) of the Federal Deposit Insurance Act. Thus this provision in no way affects the FDIC's authority under section 8(a) to terminate the insurance of an institution which *has* tangible capital.

d. *Accounting practices*

The bill requires the Federal banking agencies to establish uniform accounting standards for federally insured financial institutions. This is not an invitation to lower the overall standards to the lowest common denominator. The Committee is aware that in some instances (for example sale of assets with recourse) application to thrifts of Generally Accepted Accounting Principles for banks would have harsh results. In other instances (for example, discounting the value of general loan loss reserves) application of Generally Accepted Accounting Principles for thrifts would have harsh results on banks. The Committee expects the Federal banking agencies to develop uniform accounting standards that accurately measure the condition of the institution so that capital standards are not rendered meaningless. In their reports to Congress on capital standards, the Federal banking agencies shall explain the deviations between their respective capital standards. For example, the Committee understands that one Federal banking regulatory agency has proposed risked-based capital requirements that depart from the other Federal banking regulatory agencies' treatment of mortgage servicing rights in computing core capital.

5. Resolution Trust Corporation

a. Introduction

The overall purpose of the RTC is to dispose of failed thrifts and assets of failed thrifts and to assist the FDIC in resolving future thrift failures at minimal cost. The emergency nature of this legislation requires that Congress give the Executive Branch latitude to fashion a system in which the Administration has confidence. If time had permitted, however, the Committee would have expanded its hearings to include discussion of alternative means to accomplish the Administration's goals.

b. Oversight of the RTC

i. Composition of Oversight Board. The RTC will be governed by an Oversight Board composed of a mixture of private and public officials. The public officials on the Oversight Board are the Attorney General, the Chairman of the Federal Reserve, and the Secretary of the Treasury. The President shall also appoint two private persons to the Board who have experience equivalent to that of a chief executive officer of a major corporation, including some experience in real estate matters. The Committee believes that such private persons will bring essential real estate and management expertise to the Oversight Board. In addition, the Committee fears that significant responsibilities of the public sector members of the Oversight Board will likely leave them limited time to monitor the RTC's activities in depth.

ii. Ethical safeguards.—Under the proposed legislation, the RTC is not an agency of the Federal Government. Given the amount of public funding provided to the RTC, the Committee is concerned by the potential for the very types of fraud and abuse that caused problems at many failed thrifts. Therefore, the bill subjects agents and employees of the RTC to ethical standards at least as high as those that apply to FDIC employees. Further, the bill makes agents and employees of the RTC (such as attorneys, accountants, appraisers, brokers, and property managers) accountable for malfeasance and subject to the same criminal penalties as FDIC employees.

iii. Reports to Congress.—Under the proposed legislation, the RTC will make pivotal decisions regarding allocations of Federal funds to resolve large numbers of savings and loan insolvencies. Accordingly, the bill requires the RTC to report in detail on its actual and projected expenditures, commitments and guarantees to acquiring institutions, and future operating plans. This reporting requirement is similar to requirements imposed on the FDIC and requires financial information similar to that Congress requires of government corporations under 31 U.S.C. Section 9103(b)(2). The RTC's report shall set forth the results of an audit of the Corporation's financial statements performed by the Comptroller General or, at the Comptroller General's election, by an independent certified public accountant. Also, the RTC is required to report semiannually on its asset disposition efforts and expenses.

c. *Orderly sales of assets*

i. Goals.—The RTC's primary objectives will be: (1) to obtain the maximum net present value from the assets under its control; (2) minimize disruption to local economies; and (3) maintain an adequate level of capital. Obtaining maximum net present value from assets held by the RTC is essential to control the ultimate costs of the asset disposal program to the taxpayers. But the Committee expects the RTC to maximize net present value without damaging local markets by dumping large amounts of assets on the market all at once. For example, the Committee believes that the Department of Housing and Urban Development's auctions of large amounts of real property in Denver have depressed the entire Denver residential real estate market. The Committee believes such practices are not the best way to maximize value. The Committee believes maximum value may sometimes be obtained for certain properties by sales to public entities. For example, sales of certain structures to public housing agencies, on land with special environmental value to parks or similar public entities. Therefore, the bill requires that the RTC take certain business planning steps to provide for orderly disposal of assets.

ii. Distressed areas.—The bill further requires the RTC to take certain additional steps when selling land it owns in distressed areas. The Committee wishes to note, however, that it does not understand its market valuation requirement as a mandate to obtain an appraisal in all cases. Where other valuation methods are appropriate, an inflexible appraisal requirement could create intolerable delays. Although the Committee's bill gives the RTC maximum flexibility in disposing of assets, the Committee does not expect the RTC to structure transactions that meet the letter of the law but violate its purpose.

iii. Procedures for soliciting business.—The bill requires the RTC to prescribe procedures for the solicitation and selection of offers to acquire troubled institutions or assets held by the RTC, subject to review and approval by the RTC's Oversight Board, and to document all decisions made during the solicitation and selection process. In the past, the process of soliciting and selecting offers to acquire troubled thrifts has been loosely structured and inadequately documented. In 1988, the Federal Home Loan Bank Board approved many assisted acquisitions using a bidding process that was administered inconsistently, governed by few formal controls, and insufficiently documented. As a result, the GAO and others have questioned whether the methods the Board used in arranging these acquisitions minimized costs to the government and served the public's best interests. Similar concerns have been raised about the asset disposition process.

The proposed legislation requires the RTC to develop procedures for the solicitation and selection process. The Corporation will have flexibility to structure its bidding procedures to accommodate unique circumstances presented by particular thrift and asset dispositions, within the bounds of existing law. To the greatest extent practicable, however, the Corporation's procedures must provide for fair competition and consistent treatment of qualified bidders, and must minimize costs to the Corporation and the Federal Government. In this context, costs to the Federal Government include not only any direct costs, but also indirect costs such as Federal tax revenues foregone.

The Corporation is required to document the basis for its solicitation and selection decisions and to maintain this and any other relevant documentation in its offices. The central purpose of these requirements is to permit the Government to evaluate the Corporation's disposition activities and decisions.

d. Regional advisory boards

The tasks facing the RTC are formidable. The Committee believes that any expertise that can be brought to bear on this problem should be utilized. Because real estate markets are fundamentally local in nature, it is important to consult with talented, responsible people who understand local market nuances. This bill establishes regional advisory boards composed of such persons to advise the RTC.

e. Structural issues

i. Custodian of assets.—The RTC shall serve as legal custodian (conservator or receiver) of thrifts that fail after January 1, 1989. The RTC will assume responsibilities for such failed thrifts similar in scope to the responsibilities formerly exercised by the FSLIC when a thrift failed. Instead of employing a large internal staff to perform those custodial functions, however, the RTC will contract for management services with the FDIC. The proposed legislation also gives the RTC flexibility to contract with other entities. The Committee intends the RTC and the FDIC to use private persons or entities to the extent that such entities can further the RTC's general asset disposition objectives if, in the sole discretion of the RTC or the FDIC, such private persons or entities are available, practicable and efficient. For example, it may be prudent for the RTC to use asset management companies or real estate brokerages in order to obtain the maximum net present value from certain real estate assets. The Committee does not intend this provision to create a private right of action for frustrated private parties, however, but only to set forth a standard by which actions of the RTC and the FDIC may be reviewed by Congress.

ii. Assisted acquisitions of failed thrifts.—The RTC also will have responsibility for selling or otherwise resolving troubled thrifts under its jurisdiction. In performing this function, the proposed legislation authorizes the RTC to exercise the same powers that the FDIC may exercise. The Committee intends that the RTC endeavor to obtain a share of future potential gain for the government in assisted transactions in the form of warrants, profit sharing arrangements, participations in asset recoveries, or the like. The Committee recognizes that the RTC will need to balance this objective against its mandate to resolve problems at the lowest possible cost to the government. Of course, if material cost savings are available, the RTC may enter into transactions without warrants or similar arrangements.

iii. Changes from Administration proposal.—The Committee altered the Administration's proposal for the RTC only in certain technical and clarifying respects. For example, the Committee expanded the corporate powers of the RTC to facilitate the Corporation's performance of its asset disposition function and add flexibility to the manner in which the Corporation can dispose of assets. The Committee's bill clarifies that, when the Corporation is exercising the fiduciary powers of the FDIC as conservator or receiver of an insured institution, it will contract and otherwise act as the FDIC would be permitted to act under the Federal Deposit Insurance Act and regulations promulgated pursuant to that Act.

iv. Relationship between FDIC and RTC.—Because of the emergency nature of this legislation, the Committee did not alter the proposed statutory language that establishes the basic structure of the RTC and the functions it will be permitted to perform. The Committee notes, however, that there are potential structural issues which the Administration did not clarify. The Committee notes that the RTC could perform its principal intended functions as efficiently if the FDIC continued to serve as the actual legal custodian of institutions in conservatorship or receivership. The Committee is not entirely clear how the relationship between the RTC and its primary manager, the FDIC, will evolve. The Committee wishes to emphasize, however, its expectation that members of the Oversight Board and the FDIC's board of directors, and their respective staffs, will cooperate closely and fully with one another, and endeavor to avoid redundant decision-making.

6. Equalization of premiums and uncertainty about future rates

a. Equalization of premiums

i. Fixed insurance premiums through 1994.—Insurance premiums for banks and thrifts will be fixed through 1994 according to the following schedule (except that the FDIC maintains discretion to reduce the premiums):

Year	Basis points	
	Banks	Thrifts
1990	12	20.8
1991	15	23
1992	15	23
1993	15	23
1994	15	18

ii. Maximum premium of 30 basis points.—As under the Administration's proposal, the FDIC will have new authority to raise premiums. However, unlike the Administration's proposal this new authority may not be exercised at any time before 1995. In addition, the assessment rate will never exceed 30 basis points (rather than 35 basis points under the Administration's proposal).

iii. Equalization of bank and thrift premiums in 1998.—Thrift premiums will decline to 15 basis points on January 1, 1998 to coincide with the same 15 basis point premium that begins to apply to banks in 1991, unless the FDIC exercises its authority to raise premiums.

iv. Maximum annual increase of 5 basis points.—The FDIC's authority to raise insurance premiums by up to 50 percent in one year as proposed by the Administration is reduced to a maximum annual increase of only 5 basis points.

v. Premiums based on reserves.—The FDIC is permitted to raise premiums based on reserves falling below 1.2 percent only after both the Bank Insurance Fund ("BIF") and the Savings Association Insurance Fund (SAIF) have become fully capitalized at a reserve ratio of 1.2 percent. This would prevent the FDIC from immediately increasing premiums based on the fact that the reserve ratios of both the BIF and SAIF funds are currently under 1.2 percent.

7. *Contributions to the Resolution Funding Corporation by Federal Home Loan Banks*

The Federal Home Loan Banks will provide a portion of the funds needed by Resolution Funding Corporation ("REFCORP"). These banks will contribute a lump sum of approximately $1.8 billion to be collected over the next two and one-half to three years plus $300 million per year, starting with this calendar year, until REFCORP's bonds are retired. The $1.8 billion equals the retained earnings of the banks as of year-end 1988, less amounts previously used or expected to be used for investments in the Financing Corporation.

The $300 million per year is roughly equal to 20 percent of current annual earnings. Because 20 percent of earnings would normally be added to legal reserves, the aggregate amounts available to pay dividends may not be greatly affected by the bill. However, the loss of their accumulated retained earnings will tend to lower the banks' annual investment earnings. In the event that the industry contracts over the next few years, income from advances could be reduced, making $300 million potentially a somewhat larger portion of earnings.

Dividends at some individual Federal Home Loan Banks also may be reduced because the distribution of both stock purchases and interest payments places a heavier burden, relative to resources, on some banks than on others. This is, at least to some extent, acceptable, as a distribution formula based solely on ability-to-pay might unfairly penalize banks that have been especially successful or that followed more cautious dividend policies. However, other formulas inevitably introduce some element of windfall gains and losses for different district banks.

a. Capital stock

The $1.8 billion plus the annual payments over the first three years, for a total of $2.7 billion, will be used to purchase all of the non-voting capital stock of REFCORP.

The distribution of these funds among the Federal Home Loan Bank will be determined according to a formula devised collectively by the Federal Home Loan Banks which combines these funds with approximately $800 million of investments in the Financing Corporation. There is an explicit percentage distribution of the first $1 billion. The remainder, roughly $2.5 billion, will be distributed according to each district's percentage of assets held by FSLIC- or SAIF-insured institutions nationwide as of the most recent year-end.

Because the total amount of stock to be purchased roughly equals all of the current and prospective retained earnings and the distribution is based on other criteria, some banks will have more than adequate funds and others less. The banks with an excess will purchase stock on behalf of others to the extent needed. Those with insufficient funds will have to set aside 20 percent of their earnings to repurchase these shares. The price of the shares will rise over time, starting 12 months after their initial purchase, at the rate of the average system-wide cost of funds.

This procedure represents a change from the Administration's bill which required banks that could not get their full allotment to use 75 percent of earnings for repurchasing stock bought by others. The Committee bill should reduce the need for sharp fluctuations and individual payments by stretching out the repurchases over a longer period.

b. Interest payments

The distribution of the annual interest payments among the Federal Home Loan Banks is based on a different formula. The $300 million annual payments for interest (starting in 1992 unless investments in the Funding Corporation and the Financing Corporation are less than $300 million in a previous year) are apportioned among the banks according to their respective average level of advances outstanding during the previous year. This formula more closely approximates an ability-to-pay measure than that in the Administration bill. Thus, it reduces the discrepancies among banks in the effects of the legislation on dividend yields that the banks will be able to offer.

c. Repeal of legal reserve requirement

Legal reserves of 20 percent of earnings will continue to be set aside through 1991. Those reserves will be used to help purchase the $2.7 capital stock. After 1991, there is no important need for such reserves, and the building of such reserves combined with the burden of the $300 million annual payments places an unnecessary constraint on dividends paid to members. Accordingly, the requirement is repealed starting in 1992.

8. Limits on loans to one borrower

Current law permits a thrift to make a loan to one borrower that is equal to 100 percent of the thrift's capital. The Committee feels this limit is too risky.

a. Application of national bank standards

A national bank's loans to one borrower are limited to 15 percent of capital. This general limit will apply to thrifts.

b. Accommodation for residential mortgage loans

A thrift may make a residential mortgage loan to one borrower of up to $500,000 even if this amount would exceed the general limitation.

c. Facilitation of the sale of foreclosed real estate

A thrift may lend up to 50 percent of capital to facilitate the sale of real estate owned as the result of foreclosure.

9. Loan to value ratios

Federal law does not limit the specific amount that banks and thrifts can lend for real estate in relation to the value of the collateral. In some States, thrifts were allowed to gamble and make loans to developers equal to 100 percent of the appraisal value of the land. The Committee's bill places general limits on these loan-to-value ratios for both banks and thrifts. Loan-to-value ratios are an important part of the bill's safety and soundness features. The FHLBB has studied the issue of real estate loans with collateral values equal or close to the amount of the loan and determined that the risk characteristics of such loans are essentially the same as direct investments in real estate. The bill limits the loan to value ratio depending on risk characteristics of the following categories of land.

a. Loans secured by residential property

In general, the loan-to-value ratio for a residential mortgage will be 95 percent of the value of the residence. A higher loan-to-value ratio is permitted for mortgages under Federal guarantee programs such as VA and FHA mortgages.

b. Loans secured by developed commercial real estate

The loan-to-value ratio for loans secured by real estate with a completed building will be 80 percent.

c. Loans secured by raw land

The loan-to-value ratio for loans secured by real estate without a completed building will be 65 percent. This is not meant to affect loans to active farming operations secured by agricultural land.

d. Flexibility of limitations

Bank and thrift regulators will have the authority to modify these standards consistent with safe and sound business practices.

10. Real estate appraisals

Many loans and other transactions entered into by federally insured financial institutions are collateralized by real estate. While repayment ability forms the primary determinant of creditworthiness, the value of collateral and a reasonable ratio of loan to collateral value provide important protections against loss. Thus, the quality of real estate appraisals can significantly affect the soundness of insured institutions and, ultimately, the Federal deposit insurance system.

Evidence presented to the Committee indicates that poor quality and, in some cases, fraudulent appraisals have been associated with enormous losses at failed thrifts and contributed measurably to the thrift crisis. The Committee also notes that the House Government Operations Committee, after exhaustive hearings on the subject, concluded in a special report that appraisal abuse was "widespread" and "pervasive" and to blame for billions of dollars in losses to lenders.

Existing statutes and regulations do not require insured financial institutions to use standardized appraisal systems and certified appraisers. The proposed bill seeks to rectify this deficiency. The committee believes that appraisals of real estate collateral should be performed independently, competently, and in accordance with professional standards. Likewise, lending institutions should have policies, procedures, and controls to ensure that the appraisals forming the bases of their lending decisions do, in fact, merit reliance.

The Committee, in addressing the problem, decided to build upon work already being done by responsible elements of appraisal industry. The non-profit Appraisal Foundation, established in 1987, represents the major elements of the U.S. appraisal industry. Under its auspices, an independent Appraisal Standards Board has promulgated and promoted industry-wide standards for good appraisals. Similarly, under its auspices, an independent Qualification Board has recommended minimum requirements for education, experience, continuing education, a code of ethics and tests for use in certifying appraisers.

The bill requires each Federal financial institution's regulatory agency to establish standards for the performance of real estate appraisals and for utilization of State certified and licensed appraisers on federally related transactions. The rules would, *at a minimum,* have to meet generally accepted real estate appraisal and certification standards as evidenced by those promulgated by the Appraisal Foundation. Each regulatory agency could exceed the standards if "additional standards are required in order to properly carry out its statutory responsibilities."

In order to monitor the Federal appraisal standards and the State certification and licensing standards, the title creates an Appraisal Subcommittee within the existing Federal Financial Institutions Examination Council. In addition to its monitoring functions, the Appraisal Subcommittee will maintain a national registry of State certified and licensed appraisers and submit annual reports to the Congress on how the law is being enforced.

The Committee believes this structure will assure not only quality appraisal standards and qualified appraisers, but create appropriate enforcement and monitoring mechanisms to assure compliance with the standards.

11. Credit unions

a. Current law

Under current law enacted in 1984, credit unions, unlike other federally insured institutions, do not pay insurance premiums to finance their deposit insurance fund, the National Credit Union Share Insurance Fund ("NCUSIF"). Rather, each federally insured credit union maintains a deposit equal to one percent of its insured shares with the NCUSIF. Credit unions are permitted to count this deposit as part of their capital.

b. Administration proposal rejected

The Administration's bill proposed to have credit unions pay an annual premium to finance their insurance fund and to write off their existing deposits with the NCUSIF over an eight year period. The Committee is not certain whether such a measure is required at this time. Instead, the Committee's bill includes the credit union capitalization issue among other deposit insurance issues to be studied over the next 18 months by the Secretary of the Treasury and banking regulators. The study will also consider whether administration of the credit union insurance fund should be separated from the National Credit Union Administration ("NCUA"), which regulates and promotes credit unions. The Committee's bill also includes the NCUA Chairman among the regulators designated to conduct the study of various deposit insurance issues.

c. Comprehensive studies required

As part of the study of deposit insurance required under the bill, the Treasury Department will be required to examine the credit unions' deposit insurance system and administration. The Chairman of the National Credit Union Administration will be included in the group of regulators conducting the study.

In addition, the Committee's bill directs the GAO to examine the financial condition of credit unions and their insurance fund. The GAO's report should also include information relating to how the "common bond" requirement that applies to credit unions has been implemented. The Committee's bill requires the GAO to complete this study within 18 months, to coincide with the deadline for the Treasury Department study.

d. Employee salary cap lifted

The Administration's bill proposed to lift the caps on salaries that may be paid to employees of the Bank Board System and the Comptroller of the Currency but not to lift the salary caps for employees of the NCUA. Thus, the bill would have left NCUA employees as the only financial institution regulators subject to federal salary caps. The Committee believes this arrangement would eventually create incentives for the most capable NCUA employees to seek employment with other regulators. The Committee's bill, therefore, provides the NCUA Board with discretionary authority to maintain a pay scale for certain of its employees comparable to that in effect at the other Federal bank regulatory agencies.

12. Federal Home Loan Mortgage Corporation

The proposed bill provides the Federal Home Loan Mortgage Corporation ("FHLMC") with the market-oriented corporate structure that Congress established for the Federal National Mortgage Association ("FNMA"). This change is made necessary by the dissolution of the Federal Home Loan Bank Board, which has served a dual role as the FHLMC Board of Directors. The title creates a new, 18-member Board of Directors for FHLMC, with 5 members appointed annually by the President of the United States and the remainder elected by the voting common stockholders. Each outstanding share of FHLMC senior preferred stock will be converted to a share of voting common stock.

Other provisions of the title are intended to provide competitive parity between FHLMC and FNMA and to ensure that FHLMC's ongoing programs and activities will continue without interruption. The title grants the Secretary of HUD general regulatory authority over FHLMC that is identical, on all relevant matters, to its regulatory power over FNMA, including certain specific approval authority regarding FHLMC's mortgage programs and activities. These regulatory powers are granted to the Secretary for the purpose of assuring that FHLMC carries out its statutory responsibility for creating and maintaining secondary markets in conventional mortgages.

It is the intent of the Committee that the regulatory powers of the Secretary will not extend to FHLMC's internal affairs, such as personnel, salary, and other usual corporate matters, except where the exercise of such powers is necessary to protect the financial interests of the Federal Government or as otherwise necessary to assure that the purposes of the Federal Home Loan Mortgage Corporation Act are carried out. The title grants the Secretary of the Treasury certain approval authorities over FHLMC's issuance of unsecured debt obligations and mortgage-related securities. Treasury already possesses such powers over FNMA. The committee intends that the Treasury shall use these powers, as it does with FNMA, solely to ensure that FHLMC's financing activities are conducted in a way that promotes FHLMC's statutory purposes in appropriate coordination with financing activities of the Treasury and other government-sponsored enterprises. The title provides FHLMC with a line of credit that is identical, in amount and substance, with that of FNMA.

13. Enforcement

a. Administration proposal

The Administration bill provided additional authority for bank and thrift regulators to order restitution or indemnification, assess a civil money penalty, order affirmative action, or take action if an institution's books or records are in disorder. It also provided that an individual removed from an institution may not work at any other insured depository institution without regulatory approval. Finally, it increased civil penalties to $25,000 per day, or, if the violation is reckless, $1 million per day. The Committee's bill generally follows the Administration's proposal, with the following changes.

b. Standard of review for certain orders

The Committee's bill provides that suspension orders and temporary orders are to be reviewed under the arbitrary and capricious standard.

c. Definition of final order

Current law defines a "cease-and-desist order which has become final" and "order which has become final" as an order which was issued with the consent of the parties involved, or an order for which there is no further administrative review. The Committee's bill amends this definition so that either a cease-and-desist or other order issued by a Federal banking agency will be considered "final" when it is issued with the consent of the parties, or when there is no further administrative review. This will permit timely enforcement of agency decisions, while preserving the rights of all parties to obtain judicial review.

d. Independent contractors, appraisers, attorneys and accountants

The Committee's bill specifies that an independent contractor, including an appraiser, attorney, or accountant may be considered an institution-related party, and thus subject to enforcement actions, if he or she knowingly or recklessly participates in a wrongful action that caused, or is likely to cause significant loss to a financial institution. An independent contractor, would also be considered an institution-related party if they are otherwise participating in the affairs of a financial institution or subsidiary thereof. Thus, for example, an attorney, accountant or appraiser who is on the board of a financial institution is to be considered an institution-related party, whether or not he or she engaged in any wrongful action.

e. Mitigating circumstances

The proposed bill provides that in considering imposition of a civil money penalty, the agency will consider the appropriateness of the penalty with respect to the size of financial resources and good faith of the institution or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

f. Department of Justice Appropriations

The bill provides the Department of Justice with an authorization of appropriations of $50 million annually for fiscal years 1989 through 1991, to investigate and prosecute financial institution crimes. It is specifically intended that these additional appropriations be treated as additional funds, and not be used as replacement resources for funds already allocated from other functions for the investigations and prosecutions of financial institutions crimes.

g. Reimbursement, Restitution and Indemnification

In the case of *Larimore* v. *Conover,* 789 F.2d 1244 (7th Cir. 1986), the Court of Appeals held that section 8(b) of the Federal Deposit Insurance Act did not authorize the Comptroller to obtain reimbursement in an administrative proceeding from the director of a national bank who participated in a violation of the statutory lending limits.

The *Larimore* decision has resulted in some confusion about the extent of the Comptroller's authority to order restitution or reimbursement or other forms of indemnification. This bill clarifies the situation by specifically authorizing the Comptroller as well as the other Federal banking agencies to order a party to pay restitution, reimbursement, or indemnification and would thus allow the recovery of losses resulting from violation of laws or other improper conduct. It is the Committee's intent, however, that this power be used only in appropriate cases, for example, where the institution-related party has unjustly enriched himself at the institution's expense or where the institution-related party has acted in reckless disregard of the banking laws or regulation. It is not intended that this power will be used in cases where the institution-related party engaged in less serious violations or less serious conduct.

14. Other Issues

a. Brokered deposits

A common trait among currently weak and insolvent thrifts is a history of rapid growth made possible, in many cases, by "brokered" funds. Former Federal Reserve Board Chairman Paul Volcker, among others, testified to the Committee that brokered deposits "often fueled the growth of institutions taking excessive risks" and questioned whether brokered deposits should be permitted at all. On the other hand, some witnesses, including present Federal Reserve Board Chairman Alan Greenspan, testified that brokered deposits can, if used prudently, enhance institutional liquidity, facilitate the efficient flow of funds, and allow institutions to better manage their asset and liability maturity structure.

The bill reported by the Committee gives the RTC discretionary authority to limit the use of brokered deposits by institutions within its jurisdiction. In addition, the bill requires a study of the deposit insurance system to include potential limitations on brokered deposits, among other things.

The Committee is concerned by the ready availability of brokered funds, obtained through the payment of above-market rates, to support risky and speculative asset investment by weak and insolvent institutions. Some Committee members advocated a different, broader, focus than that taken by the proposed bill, and suggested adoption of a provision restricting the acceptance of brokered deposits by insured institutions which did not meet required capital levels. Ultimately, however, the Committee chose to forego more sweeping legislative restrictions on the use of brokered deposits at this time.

The Committee's decision to forego legislative restrictions on brokered deposits was influenced by the FDIC's issuance on March 21, 1989, of a new proposed rule requiring prior notice by insured institutions planning rapid growth. The FDIC notice proposal would cover not only growth based on brokered deposits, but also growth based on repurchase agreements and money deals. The Committee supports such rulemaking and specifically endorses the legal authority relied upon by the FDIC for its proposed rule. The Committee suggests, however, that the FDIC should carefully consider the appropriateness of the growth level proposed under the rule and ensure that adequate resources are provided for an effective and thorough review process. In addition, the Committee encourages the FDIC to amend its proposed rule to provide for compilation of information regarding the brokered deposit market, including the names of deposit brokers and institutions that receive brokered funds, and the amounts of fully insured brokered funds deposited at those institutions. The Committee believes such information would facilitate analysis of the extent and significance of the national market for fully insured brokered deposits.

b. Disclosure requirement

Banks and thrifts currently prepare and submit quarterly condition reports, but these reports contain insufficient information for regulators to assess accurately the risks that an institution is undertaking. Moreover, it is not now possible to distinguish income that a bank or thrift receives in the regular course of its business from that derived from assistance payments. Lack of information makes it more difficult for regulators to supervise the condition of institutions under their care.

While the FDIC releases virtually all of the information it collects, the FHLBB makes only limited portions of condition reports submitted to it available for public disclosure. Inadequate disclosure prevents uninsured customers from protecting their financial interests and isolates institutions from market discipline.

This legislation includes a provision that would require savings associations to submit information concerning their interest rate and credit risks, the assistance they receive, the identities of their subsidiaries and affiliates, and their equity investments in addition to other data the COSA may require. The bill further establishes a presumption that condition data will be disclosed to the public and accessible to Congress. Such disclosure should facilitate the democratic process and enhance the safety and soundness of the nation's thrifts.

c. Annual audit requirement

Current regulations require thrifts to be audited annually by auditors and in a manner satisfactory to federal regulators. Unfortunately, the audit requirement has not achieved its ostensible purpose. A recent GAO report concluded that, in six of eleven cases studied, "CPA's did not adequately audit and/or report the S&L's financial or internal control problems in accordance with professional standards."

This failure of the accounting profession deprives Federal regulators of a potentially invaluable source of critical information concerning the soundness of individual thrifts. The proposed legislation seeks to reverse this situation by supplementing the current regulatory requirement that audits satisfy federal regulators with a new power to postpone payment for the audit pending clarification or additional work by the auditor in instances where an audit report clearly falls short of regulatory standards. To ensure that auditors are not needlessly harmed by inadvertence or neglect, the bill permits a thrift to go ahead and pay its auditor if the regulator does not request any clarification or additional work within thirty days after the audit is filed with the regulator.

d. Consumer provisions and taxpayer protections

The proposed bill contains several provisions intended to protect and promote consumer interests in the home mortgage credit system.

i. Consumer Directors of Federal Home Loan Banks.—As described above, the proposed legislation requires that, in making appointments to the boards of directors of the Federal Home Loan Banks, the FHLBA reserve two positions at each bank for representatives of consumer and moderate income interests. The Committee believes that existing public interest directors on the Banks' boards have not adequately represented consumer and moderate income interests. The Committee expects this legislation to rectify that deficiency.

ii. Asset Purchases by Housing Authorities and Non-profits.—The bill enables state housing finance authorities and non-profit entities to purchase residential housing assets from the RTC. The purchasers under this title are required to invest net income attributable to the ownership of such assets in the financing, refinancing, or rehabilitation of low and moderate income housing.

The Committee intends that governmental entities as well as non-profits be able to purchase residential assets, and notes the contributions made by neighborhood-based and national non-profit entities to providing assisted housing services.

As with sales of commercial real estate assets, the Committtee intends that the primary purpose of the sale of residential assets be the realization of maximum proceeds from such sales to offset the contributions made by the American taxpayer to insure savings deposits. In the view of the Committee, this is not consistent with enabling State housing finance agencies and non-profit entities to pursue opportunities presented by such sales to increase the availability of affordable housing to Americans of low an moderate income.

iii. Public interest uses of RTC assets.—Some of RTC's assets may be so decreased in value that no reasonable recovery is anticipated. The proposed legislation authorizes the RTC to allow assets to be used for public purposes, such as homeless shelters, child care centers, or other needs of moderate- and low-income communities. Such assets could be leased, sold, given away, or otherwise transferred for these public purposes.

iv. Report on loan discrimination.—Section 1407 of the proposed legislation requires all federal regulators of institutions which make mortgage loans to report to Congress on currently available statistical evidence of discriminatory mortgage lending practices. The regulators are required to include legislative recommendations in their reports. Such recommendations might inlcude increased disclosure requirements, the use of testers, or any other means which could effectively and efficiently assure nondiscrimination in lending practices.

v. Affirmative action.—The proposed legislation specifically provides that Executive Order 11478, which prohibits discrimination and requires affirmative action in employment, applies to the agencies and federally regulated corporations covered in the proposed legislation.

The bill also requires the executive heads of the agencies or federally regulated corporations covered to establish programs that encourage the participation of minority and women owned businesses in their procurement activities. These agencies and corporations are required to use the guidelines of the Small Business Administration in establishing the certification requirements for minority or female owned businesses. The Committee recognizes that procurement by federally related agencies and corporations must be consistent with prudent business practices. Procurement is defined as buying, purchasing and contracting for goods and services required to carry out regular business activities.

vi. RTC conflict of interest protections.—All employees and independent contractors of RTC shall be required to meet conflict of interest rules and other ethical standards which are at least as stringent as those applicable to FDIC employees.

vii. GAO audits.—To ensure adequate Congressional oversight over all aspects of this legislation and to safeguard the expenditures of taxpayer funds, the GAO is given comprehensive audit and access-to-records authority over all agencies, corporations, organizations and other entities which perform any functions or activities under this legislation. The GAO is given such authority with respect to, for example, the Resolution Trust Corporation, its Oversight Board, the Resolution Funding Corporation, and the FSLIC Resolution Fund.

e. Preemption of State law in emergency acquisitions

Section 218 of the bill amends the Federal Deposit Insurance Act by adding a limitation on preemption of State law. This limitation partially reverses the decision of the FHLBB in *The Statesman Group, Inc.* (March 11, 1988) by making clear that State law is preempted only to permit a company to acquire a failing institution. Congress has not displaced any State law that limits the institution's post-acquisition activities on behalf of an affiliate or any other entity. In addition, with a few narrow exceptions, Section 13(k)(1)(A) cannot be used to preempt State law.

f. Conversions of mutual thrifts

The bill preserves the existing provisions of Federal law concerning conversion of savings institutions from mutual to stock form except with respect to conversions instituted for supervisory reasons, current Federal regulations governing conversions from mutual to stock form as well as many state laws that have been patterned after Federal rules, require a converting institution to provide its depositors with various rights, including (i) priority subscription rights to the new stock and (ii) a liquidation account specifying what a depositor would receive in the event of a complete liquidation of the institution subsequent to conversion from mutual to stock form (unless such conversion is instituted for supervisory reasons as established under regulations of the Chairman of the Savings Association). A depositor is not entitled to a mandatory distribution from an institution's net worth or surplus under any other circumstances including in connection with the conversion from mutual to stock form. These rules thereby protect the interests of the depositors in the mutual institution and also permit a converting institution to raise capital and thus operate in a safe and sound manner for the benefit of depositors, other customers, and the deposit insurance fund. The COSA would continue to apply these principles under the bill.

g. Acquisition of thrift institutions by bank holding companies

Section 601 facilitates the acquisition of thrift institutions by bank holding companies. Such acquisitions must, however, be made under section 4(c)(8) of the Bank Holding Company Act, subject to all of the requirements and restrictions applicable under that section. Section 601 does not authorize a thrift institution acquired by a bank holding company to engage in any activity that would otherwise be impermissible under section 4(c)(8).

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement regarding the regulatory impact of the bill. The bill represents an increase in the ability of the Federal banking agencies to handle problem institutions and contributes to the overall safety and soundness of the nation's financial industry. Since the bill, in large part, amends longstanding regulatory requirements created by earlier legislation, the increase in regulatory burden from this legislation will be minimal.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of subsection 12 of Rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

COST OF THE LEGISLATION

The Committee has requested a cost estimate of this legislation under the provisions of Section 403 of the Congressional Budget Act of 1974. The cost estimate of the Congressional Budget Office appears below:

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 13, 1989.

Hon. Donald W. Riegle, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached preliminary cost estimate for S. 413, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. This estimate is based on draft language and information from the Committee staff about adopted amendments. The estimate is subject to change after we have reviewed the final language of the reported bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 413

2. Bill title: Financial Institutions Reform, Recovery, and Enforcement Act of 1989

3. Bill status: As ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs, April 12, 1989.

4. Bill purpose: S. 413, as amended, would make a number of changes affecting the regulatory and insurance structure and functions of the Federal financial insurance agencies. It would establish two separate insurance agencies, both under the control of the Federal Deposit Insurance Corporation (FDIC)—the Savings Associations Insurance Fund (SAIF), to insure savings and loan institutions, and the Bank Insurance Fund (BIF), to insure commercial and savings banks. SAIF's obligations would be capped at $24 billion through 1999. The Federal Home Loan Bank Board would become part of the Treasury Department, and renamed the Federal Home Loan Bank (FHLB) System. The current lending functions of the Federal Home Loan Banks would remain.

S. 413 would transfer the assets and liabilities of the Federal Savings and Loan Insurance Corporation (FSLIC) to the newly created FSLIC Resolution Fund, which would oversee prior commitments resulting from FSLIC case resolutions; FSLIC would be dissolved. The bill would create a new corporation called the Resolution Trust Corporation (RTC) to merge close currently insolvent thrift institutions. RTC would be funded by $50 billion borrowed by a newly established Resolution Funding Corporation (REFCORP). REFCORP would raise these funds by selling $50 billion in bonds to the public over the next few years.

The legislation would make a number of changes affecting the regulation of thrifts, including specifying new standards for capital requirements as well as thrift lending. It would also increase premiums that banks and thrifts pay on insured deposits; provide increased enforcement authority and establish fines for various violations; require that the FDIC, Treasury, and the General Accounting Office conduct a number of studies; expand the Board of Directors of the Federal Home Loan Mortgage Corporation (Freddie Mac) and allow it to borrow directly from the Treasury; exempt the spending of the various agencies from any sequester of resources required under the Balanced Budget and Control Act, as amended; set guidelines for the sale of assets acquired from failed thrifts; provide the full faith and credit of the U.S. Government for all notes and similar obligations issued by BIF and SAIF, and limit the total amount of notes issued by those funds; and establish and Appraisal Subcommittee of the Financial Institutions Examination Council.

Estimated cost to the Federal Government: CBO has estimated the budget impact of S. 413, assuming enactment by the end of July, 1989. Table 1 shows the budget impact of the thrift insurance

provisions of the bill, in total and relative to the current CBO baseline. Table 2 provides similar estimates for provisions affecting commercial bank premiums.
cial Institutions Reform, Recovery, and Enforcement Act of 1989.

TABLE 1.—ESTIMATED BUDGET IMPACT OF THRIFT INSURANCE PROVISIONS

[By fiscal year, in billions of dollars]

	1989	1990	1991	1992	1993	1994
S. 413—THRIFT INSURANCE PROVISIONS						
Authorizations requiring appropriation action:						
Estimated authorization level	0.1	0.1	12.4	14.6	8.3	3.8
Estimated outlays	0.0	0.1	0.1	0.0	0.0	0.0
Direct spending:						
Estimated budget authority	10.0	25.4	16.6	2.1	2.5	2.6
Estimated outlays	20.3	24.7	28.8	15.6	8.6	5.2
Total spending:						
Estimated authorization level/budget authority	10.1	25.5	29.0	16.6	10.8	6.4
Estimated outlays	20.3	24.7	28.9	15.6	8.6	5.3
CBO BASELINE FOR FSLIC						
Estimated budget authority	9.8	12.3	10.5	12.2	6.8	8.0
Estimated outlays	13.0	10.4	11.6	6.8	6.5	5.5
DIFFERENCE						
Estimated authorization level/budget authority	0.3	13.2	18.5	4.4	4.0	−1.6
Estimated outlays	7.3	14.3	17.3	8.8	2.1	−0.2

TABLE 2.—ESTIMATED BUDGET IMPACT OF CHANGES IN COMMERCIAL BANK PREMIUMS

[By fiscal year, in billions of dollars]

	1989	1990	1991	1992	1993	1994
S. 413						
Direct spending:						
Estimated budget authority	2.5	1.5	1.0	1.0	1.0	1.0
Estimated outlays	4.1	0.6	−0.2	−0.3	−0.5	−0.7
CBO BASELINE FOR FDIC						
Estimated budget authority	2.5	1.5	1.0	1.0	1.0	1.0
Estimated outlays	4.1	1.4	1.4	1.4	1.3	1.3
DIFFERENCE						
Direct spending:						
Estimated budget authority	0.0	0.0	0.0	0.0	0.0	0.0
Estimated outlays	0.0	−0.8	−1.6	−1.7	−1.8	−2.0

S. 413 would authorize direct borrowing authority for a number of agencies: BIF could borrow directly from the Federal Home Loan Banks; RTC could borrow up to $5 billion from the Treasury; and REFCORP could borrow $50 billion from the public. In addition, BIF, SAIF, and the FSLIC Resolution Fund could pay administrative costs without appropriation action. Finally, the Treasury would have the authority to pay its share of interest on REFCORP bonds without further Congressional action.

The bill would effect Federal revenues to the extent that it changes the amount of tax benefits provided as part of case resolutions finalized in calendar year 1989. The tax preferences in question are scheduled to expire at the end of 1989. CBO cannot estimate the amount of any such revenue changes at this time, but they are expected to be small relative to the total spending resulting from the bill.

The costs of this bill fall within budget function 370.

Basis of Estimate

S. 413 would make a number of changes relative to current law; unless specifically discussed below, CBO expects that enactment of the remaining provisions of this bill would not result in any significant budget impact.

REFCORP. S. 413 would create this new agency to sell $50 billion in long-term bonds to the public. The principal on REFCORP borrowing would be repaid by purchasing U.S. Treasury zero coupon bonds that, on maturity, would be worth $50 billion. The interest payments, which account for almost all of the cost of servicing this debt, would be paid partly from future Federal Home Loan Bank income and proceeds from the liquidations of thrift assets, but mostly out of the general funds of the Treasury.

Like the existing Financing Corporation (FICO), this funding entity is intended by the Administration to be off-budget. CBO believes, however, that REFCORP would be a government entity, and should be included in the budget. REFCORP would be created by the government for the sole purpose of borrowing funds and transferring them to a Federal agency—RTC. REFCORP actions would be controlled by regulations prescribed by the RTC Oversight Board, which would consist of three federal officials. It could not pay dividends to or otherwise benefit its nominal owners, the Federal Home Loan Banks. In fact, the funds "invested" by the Federal Home Loan Banks would not be an investment at all, but would more closely resemble a tax, since there is nothing voluntary about their contribution. The bill would also give REFCORP the authority to collect assessments on federally-insured thrifts, a function normally reserved for government agencies. Furthermore, the Treasury would pay most of the cost of REFCORP borrowing by covering most of the interest costs.

This estimate, therefore, treats REFCORP as an on-budget government entity. Its borrowing is treated as a means of financing, like Treasury bonds, and not as income (offsetting collections) to the government. The receipt of the $50 billion, therefore, should not offset RTC's spending of the proceeds, and as a result, CBO projects substantial net outlays over the 1989–1991 period.

In CBO's judgment, the budget impact would be the same even if REFCORP were off-budget. In that case, the $50 billion in funds provided by REFCORP to the RTC would be treated as borrowing by a Federal agency (RTC) from REFCORP, because the government would be responsible for substantial debt service payments to REFCORP. Consequently, CBO would not count RTC's receipt of the $50 billion as an offsetting collection, even if REFCORP were off-budget.

Consistent with the Administration's projected use of the $50 billion, CBO assumes that RTC would spend $10 billion in 1989, $25 billion in 1990, and $15 billion in 1991. The bill would direct the Treasury to pay all necessary interest costs, without requiring appropriation action. This is likely to result in a relatively small spread between the interest rates on the REFCORP bonds and those on Treasury issues. CBO estimates that REFCORP interest will exceed the cost of a similar Treasury issue by 25 basis points in 1989, and by 20 basis points in 1991 and in 1992.

Size of the Problem.—The government's insurance liability falls into three categories: commitments made in resolving previously insolvent thrifts, dealing with currently and prospectively insolvent thrifts, and restoring the reserves of the deposit insurance funds. The bill provides $50 billion for current insolvencies, and authorizes appropriations of $24 billion for future cases, $8.8 billion to recapitalize SAIF, and such sums as may be necessary for Treasury contributions. Obligations of SAIF would be capped at $24 billion through 1999. The bill also authorizes the Treasury to pay any shortfall of the FSLIC Resolution Fund, including capital losses, repayment of old notes, and other expenses.

How much it will cost to pay old commitments as well as resolve the currently and prospectively insolvent institutions is very uncertain. For purposes of this estimate, CBO assumes that payments for the old caseload will total $63 billion through 1999, not including administrative expenses.

Although the bill would provide $74 billion for new cases, as projected by the Administration, CBO expects that more may be needed to reflect the further deterioration of the currently and prospectively insolvent thrifts from 1988 until the cases are resolved. The insolvent thrifts will be resolved over the next two and one-half years, and those that remain open will continue to post operating losses. Because these losses will largely be funded through reductions in assets or increases in liabilities, they will increase the cost of resolution. In addition, the owners have little financial stake in the institutions. The tendency of weakly capitalized thrifts to undertake excessively risky investments is an important source of the current problem. Although the Administration is implementing procedures to limit such speculative investments, and this bill would impose tighter restrictions on activities of the thrifts, there is no certainty that they will be completely successful.

In addition to the inevitable deterioration in the financial condition of the thrifts, the Administration may be underestimating how much it would cost if all the insolvent thrifts could be resolved immediately. Estimating the cost of future resolutions requires projections as to how the market value of the institutions' assets compares to the book value. The Administration bases its estimate of this relationship on the book value of the assets and the estimated resolution costs of previously resolved insolvent thrifts at the time they were resolved. In a number of cases, these thrifts wrote down assets during the resolution process. Since the book value of assets of the existing insolvent thrifts may not have been similarly reduced, the Administration's procedure may understate the percentage by which the book value of those assets should be discounted. Moreover, the projected resolution costs of these previously resolved thrifts are only estimates and may understate the ultimate cost.

In order to gauge the impact of these factors on the cost of resolving the remaining insolvent thrifts, CBO has projected case resolution costs using various assumptions as to the market value of their assets and the rates of change in their assets and liabilities. Even if the rates of change are well below the experience of the last few years, projected costs would exceed the $50 billion provided by the REFCORP bonds. If the rates of change were at recent historic levels, the additional costs could be as much as $30 billion more than the Administration projects; this seems unlikely. For the purpose of this estimate, CBO has assumed that an additional $15 billion would be needed over the fiscal years 1991 and 1992, and would come from the $24 billion authorized for SAIF through 1999. As a result, it is possible that SAIF would reach its ceiling before 1999 and need additional funds, or that it would stretch out its commitments to stay within resources available through 1999. This estimate does not include any funding for SAIF in excess of the $24 billion cap, but assumes that a substantial portion of the $24 billion would be spent in 1991 and 1992.

Economic Assumptions.—Interest rates affect a number of payments for activities resulting from past and future obligations. CBO's current interest rate assumptions, exceed those estimated by the Administration by about 1 percentage point in 1989, 2 percentage points in 1990, and 3 percentage points in 1991. Under CBO assumptions, interest for FICO bonds is estimated to be $11.5 billion over the 1989–1999 period, and interest on FSLIC promissory notes is estimated at $13.6 billion during the same time period, assuming the notes are paid off at maturity. In addition, interest on REFCORP bonds would total $41.6 billion through 1999, and about $150 billion over the entire 33 years.

Higher interest costs would be offset by savings of about $2.5 billion on principal payments, because higher interest rates reduce the amount of cash needed to purchase zero-coupon Treasury securities that defease the principal on the FICO and REFCORP bonds.

CBO is not able to evaluate the effect that changes in economic assumptions would have on the level of future insolvencies, nor the costs associated with such insolvencies. While regional, national, and international economic conditions will affect the ultimate cost of the Administration's proposal, CBO has no basis for translating changes in economic variables into precise cost estimates.

Assessment Income.—The bill provides for the use of assessment income from thrifts to help pay for the purchase of zero coupon securities to defease the principal on bonds issued by REFCORP, and to help cover the costs of new thrift failures. To the extent that deposit growth is less than projected, the Treasury would have to make up the difference.

The legislation would increase the assessment rate paid by thrifts in 1991 through 1993, when the rate would drop to $1.80 per thousand dollars of insured deposits. CBO estimates that deposit growth will be about 2 percent in 1989, zero in 1990, and then increase to 1 percent in 1991, 5 percent in 1992, and finally stabilize at about 6 percent in 1993. These projections reflect recent trends in thrift deposits, and the effects of enactment of the legislation, including the proposed increase in capital standards, the liquidation of many insolvent thrifts, and the behavior of interest rate sensitive deposits within the context of an effective resolution of the thrift crisis.

Using these deposit growth rates, CBO expects that assessment income over the 1989–1999 period would total about $32 billion; after excluding credit for the secondary reserve, payments for FICO interest and REFCORP principal, about $14 billion would be available to help pay for SAIF case resolutions. Relative to current law, the rates established in the bill would increase assessment income from thrifts through 1993, and decrease it thereafter.

Administrative Costs.—Based on historical spending patterns, CBO assumes that the administrative costs associated with the FSLIC Resolution Fund, RTC, and SAIF will total about $4.5 billion through 1999. This does not include the bulk of the cost of managing the assets from liquidated institutions, which are assumed to be paid by the receiverships prior to the transfer of the proceeds from liquidations. (The Administration estimated that administrative costs would be about $2.5 billion over this period.)

Income from Liquidations.—CBO assumes that roughly one-half of the new cases will result in the liquidating insolvent thrifts, and that the assets turned over to the receiverships will yield, after expenses, 40 cents for each dollar of assets, at book value. Proceeds from the new cases are estimated to be paid over seven years. These proceeds are treated as off-setting collections to the funds, and are estimated to total $12 billion through 1999.

Income from Federal Home Loan Banks.—S. 413 would require the Federal Home Loan Banks to make contributions to pay for a portion of the principal of REFCORP bonds as well as REFCORP's interest expense. CBO assumes that the Federal Home Loan Banks will provide $2.7 of their retained earnings over the next three years to REFCORP to purchase the zero coupon securities. (Assuming that REFCORP is on-budget, the purchase of these securities would be an intragovernmental transaction, and would have no budget impact. The contributions of the Federal Home Loan Banks would count as an offsetting collection on the budget.) Beginning in 1992, the Federal Home Loan Banks would contribute $300 million annually until the REFCORP debt is retired.

Treasury Payments.—The bill would require the Treasury to pay for any funding shortfall for the FSLIC Resolution Fund, which has responsibility for handling commitments incurred by the FSLIC to date. CBO estimates that payments for this purpose, including principal repayments on promissory notes, would total about $43 billion over the next 10 years. The Treasury would also have to pay a large part of REFCORP interest costs, since FHLBB income and proceeds from new liquidations will be insufficient to meet this expense. CBO expects that the Treasury would pay over $27 billion for this purpose through 1999. Overall, the Treasury would finance more than 70 percent of the net case resolution costs projected over the 1989–1999 period.

FDIC.—Assessments on bank deposits insured by BIF would be increased from 83 cents per $1,000 of deposits to $1.50 per $1,000 of deposits by 1991, although the FDIC could raise the premium under certain circumstances. Relative to current law, and adjusting for the projected changes in deposit growth at thrift institutions, CBO estimates that this provision would increase collections to the agency by nearly $20 billion over the 1990–1999 period.

Federal Home Loan Mortgage Corporation.—Title XI would amend the charter of the Freddie Mac, replacing its 3-member board with 18 members, with the majority elected by the stockholders, and 5 appointed by the President. The Secretary of Treasury would be authorized to purchase, at his discretion, up to $2.25 billion in Freddie Mac debt obligations. This Treasury direct loan authority would not be subject to prior appropriations. The Secretary of Housing and Urban Development would be given regulatory authority over Freddie Mac. CBO does not expect Freddie Mac to use its authority to borrow over the projection period; if so, this provision would have no budgetary impact.

Department of Justice.—The bill authorizes the appropriation of $50 million in each of the fiscal years 1989, 1990, and 1991 for the Attorney General to conduct investigations and to prosecute civil proceedings involving financial institutions. For purposes of this estimate, CBO assumes that the amounts authorized will be appropriated, and the spending will total $150 million through 1994.

Appraisal Subcommittee.—The bill would authorize a one-time payment of $5 million for the expenses of the new appraisal subcommittee. Thereafter, its expenses would be funded by collections from registration fees from certified and licensed appraisers.

6. Estimated cost to State and local governments: No costs would be incurred by State or local governments as a result of enactment of this bill.

7. Estimate comparison: The following table compares the CBO estimate of the budget impact of the spending provisions of S. 413 with the Administration's estimates of its proposal. (CBO does not have available an Administration estimate for the reported version of S. 413, but it is unlikely to differ significantly from the Administration's estimate for its original proposal.)

BUDGETARY IMPACT OF S. 413, AS ORDERED REPORTED

[Outlays, by fiscal year, in billions of dollars]

	1989	1990	1991	1992	1993	1994	1989–94	1989–99
CBO	20.3	23.9	27.3	13.9	6.8	3.3	95.5	102.0
Administration	11.1	1.9	6.0	3.8	3.7	1.5	28.0	39.9
Difference	9.1	22.0	21.3	10.1	3.1	1.8	67.4	62.1

Over the 1989–1999 period, CBO projects outlays totaling $62 billion above those estimated by the Administration. Of that amount, $44 billion is the result of the differing budgetary treatment of REFCORP. The remainder results from projections of lower assessment income ($5.5 billion), higher interest rates on REFCORP and FICO bonds and FSLIC notes ($10.5 billion), and higher administrative costs ($2 billion).

8. Previous CBO estimate: None.

9. Estimate prepared by: Mary Maginniss.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF SENATOR D'AMATO

The comprehensive and timely work of the Banking Committee on this bill is commendable. Under the able leadership of Senators Riegle and Garn, we have dealt with a problem of mind-boggling enormity in a most expeditious manner. Therefore, it is no crticism to say that this legislation is not perfect.

Certainly, while the Committee has done a fine job of addressing all the major issues, we have left many important issues for another day. This fact is understandable in the face of the urgent need to fund the resolution of failed institutions and close thrifts that are losing large amounts of money every day. This bill provides ample tools and direction to accomplish these priority goals.

As with all reforms of such comprehensive scope we cannot know every effect that will result from such sweeping changes. We are furthermore handicapped in our ability to comprehend the full impact of this legislation by the extraordinary speed with which this package has been assembled. For this reason it is important that the Committee and the Administration closely monitor the implementation on this legislation. In one respect, I fear that we have impaired our ability to control the new regulatory and deposit insurance regime that this bill creates.

This bill will create an unprecedented and sweeping new regulatory scheme. The FDIC will exercise broad new regulatory powers and it will also act as agent, exercising the powers of other organizations. It will continue to regulate State banks and will be a key regulator for the post-FIRREA thrift industry. It will be the agency responsible for management of failed institutions. The FDIC will have an increased scope of responsibility as an insurer, becoming the insurer of almost all deposits in the United States. In short, the FDIC will assume an unprecedented role in the regulation of the banking and thrift industries in America.

It comes as no surprise that in a time of a "crisis" such as the FSLIC insolvency that we look for a hero to take control of the situation, restore calm and return the world to normalcy. The current "hero" is the FDIC. Everyone is aware that the FDIC has done a good job of managing the banking insurance fund and I do not dispute the solid reputation that the Corporation and its current Chairman enjoy and deserve.

However, I believe that the Committee's bill engages in some excess by granting not only increased authority to the FDIC but increased autonomy. The Administration's version of S.413 included two provisions that were important means of monitoring the work of the FDIC. It placed a cap on the borrowing authority of the FDIC at the lesser of 50 percent of adjusted net worth or $10 billion. While this cap may be somewhat overly restrictive, erring on the side of limiting borrowing is wiser than granting too much and running the risk of extraordinary losses, as we have just experienced with FSLIC.

Whether the Committee's modification of the Administration's limits grants too much borrowing authority to the FDIC is an issue of grave concern. With greater time for reflection, tempering our current sense of crisis, we may need to consider this matter more thoroughly.

Reports on the current financial condition of the FDIC funds are an excellent tool to assist both the executive and legislative branches of government in performing their supervisory functions over the FDIC. As recent events prove, we can no longer abide the myth that the Federal treasury is not exposed to the risks of deposit insurance. I strongly support the Administration's proposal for quarterly reporting by FDIC on the financial condition of its deposit insurance funds. These reports will contain the type of timely information that is useful both as early warning of potential problems and much needed reassurance when the funds are strong and growing. The original S.413 would have required a report to both the Secretary of the Treasury and to the Director of the Office of Management and Budget. I believe that the Committee's elimination of the requirement to report to OMB as well as to the Treasury Department is as much compromise to the convenience of the FDIC as the Congress should allow.

In summary, I am proud to support this legislation as a solid and well-designed program for ending the debacle in the thrift industry and funding the FSLIC deficit. As we monitor the thrift industry and the deposit insurance funds of the future, we must bear in mind that no single solution to any problem of this magnitude is ever sufficient and we must therefore keep vigilant watch over both our old villains and our new heroes.

ALFONSE D'AMATO.

ADDITIONAL VIEWS OF SENATOR LARRY PRESSLER

During the hearings on this legislation, several well-informed witnesses strongly opposed the requirement that the new capital standard be fully phased in by June 1, 1991. They stressed that it is impossible for most of the savings and loan institutions to meet the capital standards timetable, especially considering the other provisions of the bill that will result in reduced earnings and discourage outside capital. What we see occurring in the marketplace and in the interest rate environment only worsens the situation.

The foregoing is especially true of small thrift institutions that are not different from other small businesses when it comes to increasing capital through earnings or attracting outside investment. They are at a great disadvantage, and this legislation makes no provision for them.

In recently reviewing the bill, I was struck by the fact that there is a heavy advantage toward the larger institutions. Provisions pertaining to amortization of goodwill and pending but not completed acquisitions are good examples. While provision is made for some large institutions, very few small thrifts benefit because very few are in those situations.

That is why, as I indicated in the markup, I would like to offer a small thrift business amendment to this legislation when the measure is considered by the full Senate. I would have liked to have pursued a Committee vote on this subject had we identified this problem earlier. Specifically, the amendment is designed to help small thrift businesses to meet the new 6 percent capitalization requirement on a more reasonable timetable if it is justified under certain conditions.

I would use the Small Business Administration definition of "small business" as it applies to this industry, which is an institution having assets of $100 million or less. This was the standard that was used in the Competitive Equality Banking Act of 1987 (Public Law 100–86). Significantly, it permitted any agricultural bank to amortize its loss on any qualified agricultural loan over a seven-year period, thus helping to maintain the bank's capital requirement.

Under the amendment, a qualified small thrift institution would be considered in compliance with uniformly applicable capital standards not less stringent than standards applicable to national banks if it maintains specified capital standards according to benchmarks extending over a period ending no later than June 1, 1994. Under my amendment, these small institutions would have to be solvent and be able to show they can meet the new requirements and timetable.

I encourage my colleagues to give this small business aspect of the thrift industry their most serious attention and review.

LARRY PRESSLER.

[101st Congress, 1st Session]

S. 774

AN ACT to reform, recapitalize, and consolidate the Federal deposit insurance system, to enhance the regulatory and enforcement powers of Federal financial institutions regulatory agencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989" or the "FIRRE Act".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

TITLE I—PURPOSES

Sec. 101. Purposes.

TITLE II—FEDERAL DEPOSIT INSURANCE CORPORATION AUTHORITIES AND RESPONSIBILITIES

Sec. 201. Financial institutions.
Sec. 202. Duties of Federal Deposit Insurance Corporation.
Sec. 203. FDIC board members.
Sec. 204. Definitions.
Sec. 205. Insured savings associations.
Sec. 206. Application process; insurance fees.
Sec. 207. Insurability factors.
Sec. 208. Assessments.
Sec. 209. FDIC corporate powers.
Sec. 210. Administration of corporation.
Sec. 211. Insurance funds.
Sec. 212. FDIC receivership powers.
Sec. 213. Bridge banks.
Sec. 214. Valuation of claims and review.
Sec. 215. FSLIC resolution fund.
Sec. 216. Secondary reserve.
Sec. 217. Amendments to section 12.
Sec. 218. Amendments to section 13.
Sec. 219. Borrowing authority.
Sec. 220. Limitation on borrowings.
Sec. 221. Reports.
Sec. 222. Regulations governing insured financial institutions.
Sec. 223. Investment activities of State savings associations.
Sec. 224. Loan to value ratios.
Sec. 225. Nondiscrimination.
Sec. 226. Brokered deposits.
Sec. 227. Contracts between financial institutions and persons providing goods, products, or services.

TITLE III—CHAIRMAN OF THE OFFICE OF SAVINGS ASSOCIATIONS

Sec. 301. Amendment to Home Owners' Loan Act of 1933.
Sec. 302. Repeals.

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Sec. 303. Qualified thrift lender.
Sec. 304. Transitional rule for certain transactions with affiliates.

TITLE IV—DISSOLUTION AND TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Sec. 401. Dissolution.
Sec. 402. Continuation of rules.
Sec. 403. Personnel.
Sec. 404. Division of property and personnel.
Sec. 405. Repeals.
Sec. 406. Report.

TITLE V—FINANCING FOR THRIFT RESOLUTIONS

Subtitle A—Resolution Trust Corporation

Sec. 501. Resolution Trust Corporation established.

Subtitle B—Resolution Funding Corporation

Sec. 502. Resolution Funding Corporation established.
Sec. 503. Financing Corporation.
Sec. 504. Mixed ownership government corporation.
Sec. 505. Federal Home Loan Bank reserves.

TITLE VI—THRIFT ACQUISITION ENHANCEMENT PROVISIONS

Sec. 601. Acquisition of thrifts by bank holding companies.
Sec. 602. Investments by savings and loan holding companies in unaffiliated thrift institutions.
Sec. 603. Technical amendment to the Bank Holding Company Act of 1956.

TITLE VII—FEDERAL HOME LOAN BANK SYSTEM REFORMS

Subtitle A—Federal Home Loan Bank Act Amendments

Sec. 701. Definitions.
Sec. 702. Federal Home Loan Bank Agency.
Sec. 703. Shareholder eligibility requirements.
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TITLE I—PURPOSES

SEC. 101. PURPOSES.

The purposes of this Act are—

(1) to promote a safe and stable system of affordable housing finance through regulatory reform;

(2) to improve supervision by strengthening enforcement powers;

(3) to curtail needless risks to the Federal Deposit Insurance System by strengthening capital, accounting, and other supervisory standards;

(4) to promote the independence of the Federal deposit insurance system from the industry it insures by assuring an inde-

pendent board of directors, adequate funding, and appropriate powers;

(5) to put the Federal deposit insurance system on a sound financial basis for the future;

(6) to establish an Office of Savings Associations in the Department of the Treasury;

(7) to create a new corporation to contain, manage, and resolve failed thrift institutions;

(8) to provide the necessary private and public financing to resolve failed financial institutions expeditiously; and

(9) to provide more effective civil money penalties and criminal penalties for crimes of fraud against financial institutions and depositories.

TITLE II—FEDERAL DEPOSIT INSURANCE CORPORATION AUTHORITIES AND RESPONSIBILITIES

SEC. 201. FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Except as otherwise hereinafter provided—

(1) the Federal Deposit Insurance Act is amended by striking "insured bank", "insured banks", and "insured bank's" and inserting "insured financial institution", "insured financial institutions", and "insured financial institution's", respectively; and

(2) by striking "Federal Home Loan Bank Board" and inserting "Chairman of the Office of Savings Associations".

(b) EXCEPTIONS.—The terms "insured bank" and "insured banks" shall not be amended as described in subsection (a)(1)—

(1) when preceded by "member" or "nonmember"; or

(2) in section 3(h), section 11(h), section 11(i), section 13(f), and section 18(d) of the Federal Deposit Insurance Act.

SEC. 202. DUTIES OF FEDERAL DEPOSIT INSURANCE CORPORATION.

Section 1 of the Federal Deposit Insurance Act (12 U.S.C. 1811) is amended by inserting "and savings associations" after "banks".

SEC. 203. FDIC BOARD MEMBERS.

(a) IN GENERAL.—Section 2 of the Federal Deposit Insurance Act is amended to read as follows:

"SEC. 2. MANAGEMENT.

"(a) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors consisting of 5 members, one of whom shall be the Comptroller of the Currency, one of whom shall be the Chairman of the Office of Savings Associations, one of whom shall be the Chairman of the Board of Directors, and 2 of whom shall be appointive members. The Chairman and the 2 appointive members shall be citizens of the United States to be appointed by the President, by and with the advice and consent of the Senate. No more than 2 of the members from among the Chairman and the appointive members shall be members of the same political party.

"(b) ACTING CHAIRMAN.—In the event of a vacancy in the position of the Chairman of the Board of Directors, and pending the appointment of his successor, or during the absence or disability of the Chairman, an Acting Chairman may be selected from the appointive members by a vote of the Board of Directors.

"(c) **Terms.**—The Chairman and each appointive member shall hold office for a term of 6 years. The Chairman and each appointive member may continue to serve after the expiration of his term until a successor has been appointed and qualified.

"(d) **Vacancy.**—In the event of a vacancy in the office of the Comptroller of the Currency, or Chairman of the Office of Savings Associations and pending the appointment of a successor, or during the absence or disability of the Comptroller, the Acting Comptroller of the Currency or acting Chairman of the Office of Savings Associations shall be a member of the Board of Directors in the place and stead of the Comptroller or Chairman.

"(e) **Other Office.**—The members of the Board of Directors shall be ineligible during the time they are in office and for 2 years thereafter to hold any office, position, or employment in any insured financial institution or holding company, except that this restriction shall not apply to any member who has served the full term for which he was appointed. No member of the Board of Directors shall be an officer or director of any insured financial institution or holding company or Federal Reserve bank or hold stock in any financial institution or holding company. Before entering upon duties as a member of the Board of Directors, each member shall certify under oath that he or she has complied with this subsection and such certification shall be filed with the secretary of the Board of Directors.".

(b) **Transition Provision.**—The members of the Board of Directors of the Federal Deposit Insurance Corporation on the day before the date of enactment of the FIRRE Act shall continue to serve in office until the expiration of their existing terms. The Chairman of the Board of Directors on such date shall continue to serve until the expiration of his term as a member.

SEC. 204. DEFINITIONS.

Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) in subsection (j), by inserting "conserving assets or" before "winding up," and by inserting before the period the following: ", or of a savings association";

(2) in subsection (l)—

(A) by inserting "or savings association" after "a bank", "the bank", "another bank", "receiving bank", and "such bank" each place they appear;

(B) by inserting "or savings association's" after the word "bank's" each time it appears; and

(C) in paragraph (5), by inserting ", Chairman of the Office of Savings Associations," after "Comptroller of the Currency";

(3) in subsection (m)—

(A) in paragraph (1), by striking "the bank" and inserting "the financial institution";

(B) in paragraph (2), by striking "ther" and inserting "term"; and

(C) by adding at the end thereof the following:

"(3) TREATMENT OF CERTAIN INSURED DEPOSITS.—Notwithstanding paragraph (1), the amount of an insured deposit held, immediately prior to the date of enactment of the FIRRE Act, as an insured account within the meaning of section 401(c) of the National Housing Act by a savings association that became an insured financial institution as a result of the operation of the last sentence of section 4(a) shall be determined in accordance with, and subject to the limitations in, the National Housing Act and the regulations, principles, and interpretations established by the Federal Savings and Loan Insurance Corporation in effect immediately prior to such date of enactment, including limitations on the amount of insurance. An insured deposit, or portion thereof, described in the preceding sentence that would not be an insured deposit or that would exceed the amount of an insured deposit if it were held by an insured bank shall cease to be an insured deposit as follows:

"(A) If the insured deposit has one or more fixed maturity dates, the insured deposit shall cease to be included within the term 'insured deposit' upon the earliest maturity date occurring after the expiration of 6 months from the date of enactment of the FIRRE Act.

"(B) If the insured deposit has a minimum required notice period, the insured deposit shall cease to be included within the term 'insured deposit' upon expiration of the required notice period or upon the expiration of 6 months after the date of enactment of the FIRRE Act, whichever is later. For the purpose of this subparagraph, the required notice period shall be deemed to be initiated on the date of enactment of the FIRRE Act.

"(C) If the insured deposit has no fixed maturity date or required notice period, the insured deposit shall cease to be included within the term 'insured deposit' upon the expiration of 6 months from the date of enactment of the FIRRE Act.

The Corporation may provide appropriate notice to depositors whose deposits are subject to this paragraph of the change in deposit insurance and of the possible termination of deposit insurance.";

(4) by striking subsection (q) and inserting the following:

"(q) The term 'appropriate Federal banking agency' shall mean—

"(1) the Comptroller of the Currency in the case of a national banking association, a District bank, or a Federal branch or agency of a foreign bank;

"(2) the Board of Governors of the Federal Reserve System—

"(A) in the case of a State member insured bank (except a District bank),

"(B) in the case of any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978, except that for the purposes of subsections (b) through (y) of section 8 of this Act, the term 'insured financial institution' includes an uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank, "(C) in the case of any foreign bank which does not operate an insured branch,

"(D) in the case of any agency or commercial lending company other than a Federal agency,

"(E) in the case of supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act; and

"(F) in the case of a bank holding company or subsidiary thereof (other than a bank);

"(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank (except a District bank) or a foreign bank having an insured branch; and

"(4) the Chairman of the Office of Savings Associations in the case of a savings association or a savings and loan holding company.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution.";

(5) by striking subsection (t);

(6) by adding at the end thereof the following:

"(u) The term 'savings association' means—

"(1) any institution the accounts of which were insured by the Federal Savings and Loan Insurance Corporation immediately prior to the enactment of the FIRRE Act; and

"(2) a Federal savings and loan association or Federal savings bank, or a building and loan, savings and loan, or homestead association, organized and operating according to the laws of the State in which it is chartered or organized, or a corporation that the Board of Directors determines to be operating substantially in the same manner as a savings and loan association.

"(v) The term 'bank' means all banks as defined in subsections (a) through (g), including any cooperative bank the deposits of which were insured under this Act immediately prior to the enactment of the FIRRE Act. Such term does not include any savings association, but such term does include a former savings association that has—

"(A) converted from a savings association charter to a bank charter as determined by the Corporation; and

"(B) elected to remain a Savings Association Insurance Fund member.

"(w)(1) The term 'financial institution' means a bank or savings association.

"(2) The term 'insured financial institution' means a bank or savings association the deposits or accounts of which are insured pursuant to this Act.

"(3) The term 'Federal financial institution means a bank chartered by the Comptroller of the Currency or a savings association chartered by the Chairman of the Office of Savings Associations.

"(4) The term 'State financial institution' means a financial institution other than (A) a Federal financial institution, or (B) a financial institution chartered under the laws of a foreign country.

"(x)(1) The term 'default' with respect to an insured financial institution means an adjudication or other official determination of a court of competent jurisdiction, the appropriate Federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured financial institution or, in the case of a foreign bank having an insured branch, for such branch.

"(2) The term 'in danger of default' with respect to an insured financial institution means that the appropriate Federal banking agency or State chartering authority has advised the Corporation with respect to such institution (or in the case of a foreign bank having an insured branch, with respect to such insured branch) that, in its opinion—

> "(A)(i) the financial institution or insured branch is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business, and
>
> "(ii) there is no reasonable prospect that the financial institution or insured branch will be able to meet such demands or pay such obligations without Federal assistance; or
>
> "(B)(i) the financial institution or insured branch has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and
>
> "(ii) there is no reasonable prospect for the replenishment of the capital of the financial institution or insured branch without Federal assistance.

"(y)(1) The term 'financial institution holding company' means a bank holding company or a savings and loan holding company.

"(2) The term 'bank holding company' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

"(3) The term 'savings and loan holding company' has the same meaning as in section 10(a)(1)(D) of the Home Owners' Loan Act of 1933.

"(z)(1) The term 'institution-related party' means a director, officer, employee, agent, controlling shareholder (other than a holding company), or other person participating in the conduct of the affairs of an insured financial institution or a subsidiary of an insured financial institution, or any person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 7(j).

"(2) The term 'other person participating in the conduct of the affairs of an insured financial institution or subsidiary of an insured financial institution' includes, in addition, an independent contractor (including an attorney, appraiser, or accountant) who knowingly or recklessly participates in a wrongful action that had or is likely to have an adverse effect on an insured institution.

"(aa) The term 'subsidiary' means any company owned or controlled directly or indirectly by another company. Such term includes a service corporation owned in whole or in part by an insured financial institution or any subsidiary of such a service corporation.

"(bb) The term 'control' has the same meaning as under section 2 of the Bank Holding Company Act of 1956.

"(cc) The term 'violation' includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(dd) The term 'State housing finance authority' means any public agency, authority, or corporation that serves as an instrumentality of a State or political subdivision thereof and which functions as a source of residential mortgage loan financing in any such State.

"(ee) The term 'mortgage related assets' means (1) residential mortgage loans secured by one-to-four family or multi-family dwellings, and (2) real property improved with one-to-four family or multi-family residential dwellings, in all such cases located within the jurisdiction of the applicable State Housing Finance Authority.".

SEC. 205. INSURED SAVINGS ASSOCIATIONS.

Section 4 of the Federal Deposit Insurance Act (12 U.S.C. 1814) is amended—

(1) by adding at the end of subsection (a) the following: "Each savings association, the accounts of which were insured by the Federal Savings and Loan Insurance Corporation on the date immediately preceding the date of enactment of the FIRRE Act, shall be, without application or approval, an insured financial institution as of the date of enactment of that Act.";

(2) by inserting after the first sentence of subsection (b) the following: "Any application or notice for membership or to commence or resume business shall be promptly provided by the appropriate Federal banking agency to the Corporation and the Corporation shall have a reasonable period to provide comments with respect thereto which must be considered by the appropriate Federal banking agency in making its findings thereon and with respect to the statutory factors in section 6 of this Act.";

(3) by striking the last two sentences of subsection (b) and all of subsection (c) and inserting the following:

"(c) CONTINUATION OF INSURANCE FOLLOWING CONVERSION.—A State financial institution resulting from the conversion of an insured Federal financial institution shall continue as an insured financial institution.

"(d) CONTINUATION OF INSURANCE FOLLOWING MERGER.—A State financial institution resulting from the merger or consolidation of insured financial institutions, or from the merger or consolidation of a noninsured financial institution with an insured financial institution, shall continue as an insured financial institution.".

SEC. 206. APPLICATION PROCESS; INSURANCE FEES.

Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) is amended—

(1) by striking out "(a) Subject to the provisions of this Act, any" and inserting "(a) APPLICATION FOR INSURANCE.—

"(1) BANKS.—Any";

(2) in the first sentence of subsection (a)(1), by inserting "and State savings association" after "State nonmember bank"; and

(3) in the second sentence of subsection (a)(1)—

(A) by striking the comma following "State nonmember bank" and inserting "or such State savings association,";

(B) by striking the comma after "such bank" and inserting "or savings association,"; and

(C) by inserting before the period the following: "or savings association";

(4) by adding at the end of subsection (a) the following:

"(2) SAVINGS ASSOCIATIONS.—Any Federal savings association that is authorized by the Chairman of the Office of Savings Associations to engage in the business of receiving deposits, other than trust funds as herein defined, upon application by the association to the Chairman of the Office of Savings Associations, may become an insured financial institution following submission of such application to the Corporation together with a certificate issued to the Corporation by the Chairman of the Office of Savings Associations, unless insurance is denied by the Board of Directors. Such certificate shall state that the savings association is authorized to transact business as a savings association and that consideration has been given to the factors enumerated in section 6 of this Act. After the Corporation's review of such certificate and application, and any appropriate examination by the Corporation, the Board of Directors shall give consideration to the factors set forth in paragraphs (1), (2), (3), (4), and (5) of section 6 of this Act in determining whether to deny insurance. If the Board of Directors, after giving due deference to the determination of the Chairman of the Office of Savings Associations does not concur with the determination of the Chairman of the Office of Savings Associations, the Board of Directors shall promptly notify the Chairman of the Office of Savings Associations that insurance has been denied, giving specific reasons in writing for the Corporation's determination. In such case no insurance shall be granted. Any determination by the Board of Directors to deny insurance to a Federal savings association under this subsection may not be delegated and may be made only upon a vote of three-fourths of all members of the Board of Directors. With respect to (A) any interim Federal savings association chartered by the Chairman of the Office of Savings Associations, and which will not open for business, (B) a Federal savings association resulting from the conversion of an insured State savings association or savings bank, or (C) a Federal savings association resulting from the merger or consolidation of insured savings associations or savings banks, insurance shall be automatically granted upon issuance of such association's charter by the Chairman of the Office of Savings Associations.";

(5) in subsection (b)—

(A) in paragraph (4), by inserting "and fitness" after character;

(B) by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively; and

(C) by inserting after paragraph (4) the following:

"(5) the risk presented to the Bank Insurance Fund or the Savings Association Insurance Fund;";

(6) by adding at the end thereof the following:

"(d) INSURANCE FEES.—

"(1) NONINSURED INSTITUTIONS.—

"(A) IN GENERAL.—Every noninsured financial institution that becomes insured by the Corporation, and every noninsured branch that becomes insured by the Corporation, shall pay the Corporation a fee the Corporation may by regulation prescribe, after giving due consideration to the need to establish and maintain reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund as required by section 7. A financial institution that becomes an insured financial institution as a result of the operation of the last sentence of section 4(a) of this Act shall not pay a fee under this subparagraph.

"(B) FEE CREDITED TO APPROPRIATE FUND.—The fee paid by the financial institution shall be credited to the Bank Insurance Fund if the financial institution becomes a Bank Insurance Fund member, or to the Savings Association Insurance Fund if the financial institution becomes a Savings Association Insurance Fund member.

"(2) CONVERSIONS.—

"(A) PROHIBITED.—No insured financial institution may participate in a conversion transaction without the prior consent of the Corporation. Except as provided in paragraph (C), the Corporation shall not provide its consent to any conversion transaction occurring before the expiration of 5 years from the date of enactment of the FIRRE Act.

"(B) DEFINED.—A 'conversion transaction' means—

"(i) the change of status of an insured financial institution, whether as a result of a charter conversion or otherwise, from a Bank Insurance Fund member to a Savings Association Insurance Fund member or from a Savings Association Insurance Fund member to a Bank Insurance Fund member;

"(ii) the merger or consolidation of a Bank Insurance Fund member with a Savings Association Insurance Fund member;

"(iii)(I) the assumption on the part of a Bank Insurance Fund member of liability to pay any deposits in a Savings Association Insurance Fund member; or

"(II) the assumption on the part of a Savings Association Insurance Fund member of liability to pay any deposits in a Bank Insurance Fund member; or

"(iv)(I) the transfer on the part of a Bank Insurance Fund member of assets to any Savings Association Insurance Fund member in consideration of the assumption of liabilities for any portion of the deposits in such Bank Insurance Fund member; or

"(II) the transfer on the part of a Savings Association Insurance Fund member of assets to any Bank Insurance Fund member in consideration of the assumption of liabilities for any portion of the deposits in such Savings Association Insurance Fund member.

"(C) PERMITTED CONVERSIONS.—The Corporation may provide its consent at any time to a conversion transaction if—

"(i) the conversion transaction affects an insubstantial portion, as determined by the Corporation, of the insured liabilities of each financial institution participating in the conversion transaction;

"(ii) the conversion occurs in connecting with the acquisition of a Savings Association Insurance Fund member in default or in danger of default, the Corporation determines that the financial benefits to the Savings Association Insurance Fund equals or exceeds the Corporation's estimate of loss of assessment income to such insurance fund over the 5 years following the conversion, and the Resolution Trust Corporation concurs with the Corporation's determination;

"(iii) the conversion occurs in connection with the acquisition of a Bank Insurance Fund member in default or in danger of default and the Corporation determines that the financial benefits to the Bank Insurance Fund equals or exceeds the Corporation's estimate of the loss of assessment income to the insurance fund over the 5 years following the conversion;

"(iv) the conversion occurs in connection with the acquisition of a State chartered savings association pursuant to a letter of intent or a written memorandum of understanding entered into on or prior to December 31, 1988, with a bank holding company, which savings association (I) has never accepted deposits, (II) is not insured by the Federal Savings and Loan Insurance Corporation, and (III) has been owned by an entity which is required by Federal statute to divest itself of such savings association; or

"(v) the conversion transaction assists the transferring financial institution in meeting a capital standard agreed to by the transferring financial institution with its Federal supervisory agency prior to the passage of the Competitive Equality Banking Act of 1987, and the transferring institution has made a commitment in writing to use any gain from the conversion transaction to increase its capital.

For the purpose of clause (i), a conversion transaction shall be deemed to affect an insubstantial portion of the insured liabilities of the financial institution if the insured liabilities transferred over the 5-year period commencing upon enactment of the FIRRE Act do not exceed 20 percent of such insured liabilities existing at the date of enactment of such Act.

"(D) EXIT AND ENTRY FEES.—

"(i) The Corporation, with the approval of the Secretary of the Treasury, is authorized to prescribe and impose an exit fee which shall be payable in the case of a conversion transaction in which the resulting or acquiring financial institution is a Bank Insurance

Fund member. The fee shall be collected from the converting institution or other institution involved in the conversion specified by the Secretary and shall be payable in the same manner and to the same entity as if it were an assessment for the year or other applicable period during which the conversion occurs, except that the Secretary may authorize such fee to be paid to the Financing Corporation (as defined in section 21A of the Federal Home Loan Bank Act) for interest payments on its obligations if such Financing Corporation has exhausted all other sources of funding for such purposes.

"(ii) The Corporation is authorized to establish and collect an entrance fee. The Corporation is authorized to determine the amount of the fee, except that—

"(I) in the case of a conversion transaction in which the resulting or acquiring financial institution is a Bank Insurance Fund member, the fee shall be in an amount necessary to prevent dilution of the Bank Insurance Fund, and shall be paid to the Bank Insurance Fund; and

"(II) in the case of a conversion transaction in which the resulting or acquiring financial institution is a Savings Association Insurance Fund member, the fee shall be in an amount necessary to prevent dilution of the Savings Association Insurance Fund, and shall be paid to the Savings Association Insurance Fund.

"(e) LIABILITY OF COMMONLY-CONTROLLED FINANCIAL INSTITUTIONS.—

"(1) REIMBURSEMENT REQUIRED.—On and after the date of enactment of the FIRRE Act, whenever the Corporation, acting in accordance with applicable law, incurs a loss in connection with the default of an insured financial institution, or in connection with providing assistance to an insured financial institution in danger of default, any other commonly-controlled insured financial institution shall be liable to the Corporation following notice to the institution as provided in this subsection and on request shall reimburse the Corporation for any such loss. No such liability shall arise under this subsection if the Corporation fails to provide notice within 2 years of the date the Corporation incurs such loss.

"(2) AMOUNT OF COMPENSATION; PROCEDURES.—

"(A) USE OF ESTIMATES.—When an insured financial institution is in default or requires assistance to prevent default, the Corporation shall in good faith estimate its prospective losses resulting from such default or assistance, shall advise any commonly-controlled financial institution of the amount of its liability in connection with such losses, and if there is more than one such commonly-controlled financial institution, determine each commonly-controlled financial institution's share of such liability.

"(B) PROCEDURES; IMMEDIATE PAYMENT.—The Corporation, after consultation with the appropriate Federal banking agency, shall specify the procedures and schedule by which each such commonly-controlled financial institution must reimburse the Corporation for its liability under this subsection on a case-by-case basis. The Corporation may compel any or all commonly-controlled financial institutions to make immediate payment of any compensation required under paragraph (1).

"(C) PRIORITY.—The liability established pursuant to the provisions of this subsection shall be—

"(i) superior to the following obligations and liabilities of the financial institution:

"(I) any obligation subordinated to depositors or other general creditors;

"(II) any obligation to shareholders arising as a result of their status as shareholders (including a bank holding company or savings and loan holding company or any shareholder or creditor of such company); or

"(III) any unsecured obligation or liability owed to any other commonly-controlled company or commonly-controlled insured financial institution; and

"(ii) subordinate in right or payment to the following obligations and liabilities of the financial institution:

"(I) deposit liabilities other than those to commonly-controlled financial institutions;

"(II) secured obligations; and

"(III) other general liabilities, except to the extent specified in (i) above; and

"(iii) equal in preference with other liabilities and obligations of the financial institution.

"(D) ADJUSTMENT OF ESTIMATED PAYMENT.—

"(i) OVERPAYMENT.—If the amount of compensation estimated by and paid to the Corporation by one or more such commonly-controlled financial institutions is greater than the actual loss incurred by the Corporation, the Corporation shall reimburse each such commonly-controlled financial institution its pro-rata share of any overpayment.

"(ii) UNDERPAYMENT.—If the amount of compensation estimated by and paid to the Corporation by one or more such commonly-controlled financial institutions is less than the actual loss incurred by the Corporation, the Corporation shall redetermine in its discretion the liability of each such commonly-controlled financial institution to the Corporation and shall require each such commonly-controlled financial institution to make payment of any additional liability to the Corporation.

"(3) REVIEW.—

"(A) ADMINISTRATIVE REVIEW.—The Corporation shall by regulation establish an administrative procedure for review of the amount of losses, the liability of individual commonly-controlled financial institutions, and the schedule of payments to be made by such commonly-controlled financial institutions. The regulations shall provide for a hearing on the record in accordance with section 556 of title 5, United States Code, on the part of any such commonly-controlled financial institution.

"(B) JUDICIAL REVIEW.—Determinations made by the Corporation of the amount of losses, the liability of commonly-controlled financial institutions, or the procedures or scheduling of the payments required, shall be reviewable by the Court of Appeals for the District of Columbia Circuit or the Court of Appeals for the circuit where the financial institution in default or in danger of default is located, in accordance with chapter 7 of title 5, United States Code.

"(4) LIMITATION ON RIGHTS OF PRIVATE PARTIES.—No court shall give effect to any rights or powers conferred on any person, by State or Federal law or otherwise, insofar as giving effect to any such rights or powers would impair the ability of the financial institution to perform its obligations under this subsection.

"(5) LIMITATIONS.—

"(A) LIMITED PARTNERSHIPS.—The provisions of this subsection shall not apply to any limited partnership or its affiliates (other than insured financial institutions which are majority-owned subsidiaries of such partnership) if a registration statement indicating that such partnership intends or intended to acquire one or more insured financial institutions was filed with the Securities and Exchange Commission with respect to such partnership on or before April 10, 1989.

"(B) SAVINGS ASSOCIATION AND BANK INSURANCE FUND MEMBERS.—For a period of 5 years from the date of enactment of the FIRRE Act, no Savings Association Insurance Fund member shall have any liability to the Corporation under this subsection arising out of assistance provided to or loss incurred as a result of the default of a Bank Insurance Fund member, and no Bank Insurance Fund member shall have such liability with respect to assistance provided to or loss incurred as a result of the default of a Savings Association Insurance Fund member.

"(C) EXCLUSION.—Notwithstanding the foregoing, no insured financial institution shall be liable to the Corporation for any such loss incurred in connection with the default of or provision of assistance to any other commonly-controlled insured financial institution, the principal office of which is located in another State, if that other State was economically distressed at the time of the acquisition of the commonly-controlled insured financial institution in that other State, and one or more commonly-controlled insured financial institutions in that other State had assets in excess of $4,000,000,000 in the aggregate and was a member of the Federal Reserve System. This subparagraph shall apply only for 5 years after the acquisition or such longer period determined by the Corporation after written application by the acquiror, and only to acquisitions consummated on May 1, 1987, or January 29, 1988.

"(D) DEFINITION.—Financial institutions are not 'commonly-controlled' for a period of 5 years after the acquisition or such longer period determined by the Corporation after written application of the acquiror, whenever one financial institution controls another by virtue of ownership of voting shares acquired in securing or collecting a debt previously contracted in good faith, and from the date of enactment of the FIRRE Act to the expiration of the exclusion, notwithstanding the provisions of 23A(d)(1) of the Federal Reserve Act, the controlling bank and all of its other insured financial institution affiliates comply fully with the restrictions of 23A and 23B of the Federal Reserve Act in their transactions with the acquired insured financial institution.

"(6) DEFINITION.—For the purpose of this subsection, financial institutions are 'commonly-controlled' if they are controlled by the same financial institution holding company (including any company required to file reports pursuant to section 4(f)(6) of the Bank Holding Company Act of 1956) or if one financial institution is controlled by another financial institution.".

SEC. 207. INSURABILITY FACTORS.

Section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816) is amended to read as follows:

"SEC. 6. FACTORS TO BE CONSIDERED.

"Except as otherwise provided, the factors to be considered and enumerated in the certificate required under section 4(b) and to be considered by the Board of Directors under section 5 shall be—

"(1) the financial history and condition of the financial institution;

"(2) the adequacy of its capital structure;

"(3) its future earnings prospects;

"(4) the general character and fitness of its management;

"(5) the risk presented to the Bank Insurance Fund or the Savings Association Insurance Fund, as appropriate;

"(6) the convenience and needs of the community to be served; and

"(7) whether or not its corporate powers are consistent with the purposes of this Act.".

SEC. 208. ASSESSMENTS.

Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—

(1) in subsection (a)(2)—

(A) by inserting ", the Chairman of the Office of Savings Associations, any Federal Home Loan Bank," after "Comptroller of the Currency" in the first sentence of subparagraph (A);

(B) by striking "either" and inserting "any" in such sentence;

(C) by striking "State nonmember bank (except a District bank)" in the second sentence of subparagraph (A) and inserting "financial institution";

(D) by inserting "to the Chairman of the Office of Savings Associations, to any Federal Home Loan Bank," after "Comptroller of the Currency," in the second sentence of subparagraph (A); and

(E) by striking subparagraph (B) and inserting the following:

"(B) The Board of Directors may from time to time require any or all insured financial institutions to file such additional reports as the Corporation, after agreement with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Chairman of the Office of Savings Associations, as appropriate, may deem advisable for insurance purposes.";

(2) in subsection (a)(3)—

(A) by striking all before "reports of condition" and inserting "Each insured financial institution shall make to the appropriate Federal banking agency 4";

(B) by inserting after the word "bank" each time it appears in the second, fifth, and sixth sentences, the following: "or savings association";

(C) by inserting after "member bank" in the seventh sentence the following: "and each insured savings association"; and

(D) by inserting "or savings associations" after "banks" in the last sentence;

(3) in paragraphs (4) and (7), by inserting after the words "bank", "bank's", or "banks" (except "foreign banks") the words "or savings association", "or savings association's", or, "or savings associations", respectively;

(4) by striking paragraphs (1) and (2) of subsection (b) and inserting in lieu thereof the following:

"(1) Assessment rates.—

"(A) Annual assessment rates prescribed.—The Corporation shall set assessment rates for insured financial institutions annually. The Corporation shall fix the annual assessment rate for Bank Insurance Fund members independently from the annual assessment rate for Savings Association Insurance Fund members. The Corporation shall by June 30 of each year announce the assessment rates for the succeeding calendar year.

"(B) Designated reserve ratio defined.—

"(i) The designated reserve ratio of the Bank Insurance Fund shall be—

"(I) 1.25 percent of insured accounts; or

"(II) such higher ratio, not exceeding 1.65 percent of insured accounts, that the Board of Directors by a majority vote determines to be justified by circumstances that raise a significant risk of substantial future losses to the Bank Insurance Fund, for a period of one year and for further periods not exceeding one year each and by a majority vote of the Board of Directors in each instance.

"(ii) The designated reserve ratio of the Savings Association Insurance Fund shall be—

"(I) 1.25 percent of insured accounts; or

"(II) such higher ratio, not exceeding 1.65 percent of insured accounts, that the Board of Directors by a majority vote determines to be justified by circumstances that raise a significant risk of substantial future losses to the Savings Association Insurance Fund, for a period of one year and for further periods not exceeding one year each and by a majority vote of the Board of Directors in each instance.

"(iii) The Board of Directors shall—

"(I) maintain reserves in the Bank Insurance Fund received pursuant to clause (i)(II) as Supplemental Reserves in the Bank Insurance Fund;

"(II) allocate each calendar quarter to an Earnings Participation Account in the Bank Insurance Fund the investment income earned by the Bank Insurance Fund on such Supplemental Reserves in the preceding calendar quarter;

"(III) distribute such Earnings Participation Account at the conclusion of each calendar year to Bank Insurance Fund members; and

"(IV) distribute such Supplemental Reserves to Bank Insurance Fund members if and to the extent such Supplemental Reserves are not needed to satisfy the designated reserve ratio.

"(iv) The Board of Directors shall—

"(I) maintain reserves in the Savings Association Insurance Fund received pursuant to clause (ii)(II) as Supplemental Reserves in the Savings Association Insurance Fund;

"(II) allocate each calendar quarter to an Earnings Participation Account in the Savings Association Insurance Fund the investment income earned by the Savings Association Insurance Fund on such Supplemental Reserves in the preceding calendar quarter;

"(III) distribute such Earnings Participation Account at the conclusion of each calendar year to Savings Association Insurance Fund members; and

"(IV) distribute such Supplemental Reserves to Savings Association Insurance Fund members if and to the extent such Supplemental Reserves are not needed to satisfy the designated reserve ratio.

"(C) ASSESSMENT RATE FOR BANK INSURANCE FUND MEMBERS.—The annual assessment rate for Bank Insurance Fund members shall be—

"(i) until December 31, 1989, one-twelfth of 1 percent;

"(ii) from January 1, 1990, through December 31, 1990, twelve one-hundredths of 1 percent;

"(iii) on and after January 1, 1991, fifteen one-hundredths of 1 percent;

"(iv) on January 1 of a calendar year in which the reserve ratio of the Bank Insurance Fund is expected to be below the designated reserve ratio by determination of the Board of Directors, such rate determined by the Board of Directors to be appropriate to restore the reserve ratio to the designated reserve ratio within a reasonable period of time, after taking into consideration the expected operating expenses, case resolution expenditures, and investment income of the Bank Insurance Fund, and the impact on insured bank earnings and capitalization, except that—

"(I) from the date of enactment of the FIRRE Act and through 1994, so long as the Bank Insurance Fund reserve ratio is rising on a calendar year basis, the rate shall be as specified in clauses (i), (ii), and (iii), above;

"(II) the rate shall not exceed thirty one-hundredths of one percent; and

"(III) the increase in the rate shall not exceed five one-hundredths of one percent; and

"(v) at all times not less than $1,000 per annum.

"(D) ASSESSMENT RATE FOR SAVINGS ASSOCIATION INSURANCE FUND MEMBERS.—The annual assessment rate for Savings Association Insurance Fund members shall be—

"(i) until December 31, 1990, 20.8 one-hundredths of 1 percent;

"(ii) from January 1, 1991, through December 31, 1993, twenty-three one-hundredths of 1 percent;

"(iii) from January 1, 1994, through December 31, 1997, eighteen one-hundredths of 1 percent;

"(iv) on and after January 1, 1998, fifteen one-hundredths of 1 percent;

"(v) on January 1 of a calendar year in which the reserve ratio of the Savings Association Insurance Fund is expected to be below the designated reserve ratio by determination of the Board of Directors, such rate determined by the Board of Directors to be appropriate to restore the reserve ratio to the designated reserve ratio within a reasonable period of time, after taking into consideration the expected operating expenses, case resolution expenditures, and investment income of the Savings Association Insurance Fund, and the impact on insured savings association earnings and capitalization, except that—

"(I) from the date of enactment of this provision and through 1994, the rate shall be as specified in (i), (ii), and (iii) above;

"(II) from January 1, 1995 and until the calendar year in which the Savings Association Insurance Fund first attains a ratio of 1.20 percent of insured accounts, the rate shall be as specified in (iii) and (iv) above, unless the Savings Association Insurance Fund has experienced a net loss during any one of the prior 3 years, or in the opinion of the Board of Directors, extraordinary circumstances exist that raise a reasonable risk of serious future losses to the Savings Association Insurance Fund;

"(III) the rate shall not exceed thirty one-hundredths of one percent; and

"(IV) the increase in the rate shall not exceed five one-hundredths of one percent; and

"(vi) at all times not less than $1,000 per annum.

"(E) FINANCING CORPORATION AND FUNDING CORPORATION ASSESSMENTS.—Notwithstanding any authority provided herein, with respect to Savings Association Insurance Fund members, amounts assessed by the Financing Corporation and the Funding Corporation under section 21 and 21B, respectively, of the Federal Home Loan Bank Act shall be subtracted from the amounts authorized to be assessed by the Corporation hereunder. The Corporation may adopt such regulations as may be necessary to phase in the assessments required to be made by the Financing Corporation on Savings Association Insurance Fund members pursuant to section 21 of the Federal Home Loan Bank Act in order that the Financing Corporation can obtain sufficient funds for interest payments required thereunder.

"(2) ASSESSMENT PROCEDURES.—

"(A) SEMIANNUAL ASSESSMENTS.—Except as provided in subsection (c)(2) of this section—

"(i) the semiannual assessment due from any Bank Insurance Fund member for any semiannual period shall be equal to one-half the annual assessment rate applicable to such Bank Insurance Fund member multiplied by such Bank Insurance Fund member's average assessment base for the immediately preceding semiannual period; and

"(ii) the semiannual assessment due from any Savings Association Insurance Fund member for any semiannual period shall be equal to one-half the annual assessment rate applicable to such Savings Association Insurance Fund member multiplied by such Savings Association Insurance Fund member's average assessment base for the immediately preceding semiannual period.

"(B) PERIOD DEFINED.—For the purpose of this section the term 'semiannual period' means a period beginning on January 1 of any calendar year and ending on June 30 of the same year, or a period beginning on July 1 of any calendar year and ending on December 31 of the same year.";

(5) in paragraphs (3) through (8) of subsection (b), by striking "bank" and "bank's" and inserting "financial institution" and "financial institution's", respectively, except that the phrases "foreign bank" and "foreign banks" shall not be amended; and

(6) in subsection (c)—

(A) by striking "bank" and inserting "financial institution", and

(B) by inserting after the first sentence the following: "A financial institution that becomes an insured financial institution as a result of the operation of section 4(a) shall pay such an assessment.";

(7) by striking subsection (d) and inserting the following:

"(d) ASSESSMENT CREDITS.—

"(1) IN GENERAL.—

"(A) On June 30 of each calendar year, the Corporation shall prescribe and publish the aggregate amount to be credited to insured financial institutions in the succeeding calendar year; and

"(B) Each insured financial institution shall be invoiced by the Corporation in such succeeding calendar year for the net premium which shall be equal to the assessment less such prescribed assessment credit.

"(C) The Corporation shall deduct any outstanding obligations owed to the corporation by an individual insured financial institution from any assessment credit to be credited to such financial institution.

"(2) ASSESSMENT CREDIT FOR INSURED BANKS.—

"(A) CREDIT BARRED.—The Board of Directors shall not prescribe an assessment credit to Bank Insurance Fund members, when the Board of Directors determines that the Bank Insurance Fund reserve ratio is expected to be equal to or less than the designated reserve ratio after taking into consideration the Fund's expected operating expenses, case resolution expenditures, investment income, and assessment income.

"(B) CREDIT AUTHORIZED.—When the Board of Directors determines after taking into consideration the Fund's expected operating expenses, case resolution expenditures, investment income, and assessment income, that the Bank Insurance Fund reserve ratio is expected to exceed the designated reserve ratio in the succeeding year, the Board of Directors shall prescribe an assessment credit to Bank Insurance Fund members in such succeeding calendar year equal to the smaller of the following amounts—

"(i) the amount necessary to reduce the Bank Insurance Fund reserve ratio to the designated reserve ratio; or

"(ii) 100 percent of the net assessment income to be received from Bank Insurance Fund members in such succeeding year.

"(3) ASSESSMENT CREDIT FOR INSURED SAVINGS ASSOCIATONS.—

"(A) CREDIT BARRED.—The Board of Directors shall not prescribe an assessment credit to Savings Association Insurance Fund members, when the Board of Directors determines that the Savings Association Insurance Fund reserve ratio is expected to be equal to or less than the designated reserve ratio after taking into consideration the fund's expected operating expenses, case resolution expenditures, investment income, and assessment income.

"(B) CREDIT AUTHORIZED.—When the Board of Directors determines after taking into consideration the fund's expected operating expenses, case resolution expenditures, investment income, and assessment income, that the Savings Association Insurance Fund reserve ratio is expected to exceed the designated reserve ratio in the succeeding year, the Board of Directors shall prescribe an assessment credit to Savings Association Insurance Fund members in such succeeding calendar year equal to the smaller of the following amounts—

"(i) the amount necessary to reduce the Savings Association Insurance Fund reserve ratio to the designated reserve ratio; or

"(ii) 100 percent of the net assessment income to be received from Savings Association Insurance Fund members in such succeeding year.

"(4) NET ASSESSMENT INCOME DEFINED.—The term 'net assessment income' as used herein means—

"(A) for the Bank Insurance Fund, the total assessments which become due during the calendar year less operating costs and expenses described in clause (i), further reduced by the amount by which the Bank Insurance Fund's insurance costs described in clause (ii), exceed its investment income for the calendar year, as follows:

"(i) for the purposes of this subparagraph, the operating costs and expenses to be deducted from assessments include the operating costs and expenses of—

"(I) the Corporation for the calendar year directly attributable to the Bank Insurance Fund; and

"(II) the Bank Insurance Fund; and

"(ii) for the purposes of this subparagraph, the insurance costs shall include—

"(I) additions to the Bank Insurance Fund's reserve to provide for insurance losses during the calendar year, except that any adjustments to reserve which result in a reduction of such reserve shall be added; and

"(II) the insurance losses sustained in said calendar year; and

"(B) for the Savings Association Insurance Fund, the total assessments which become due during the calendar year less operating costs and expenses described in clause (i), further reduced by the amount by which the Savings Association Insurance Fund's insurance costs described in clause (ii), exceed its investment income for the calendar year, as follows:

"(i) for the purposes of this subparagraph, the operating costs and expenses to be deducted from assessments include the operating costs and expenses of—

"(I) the Corporation for the calendar year directly attributable to the Savings Association Insurance Fund; and

"(II) the Savings Association Insurance Fund; and

"(ii) for the purposes of this subparagraph, the insurance costs shall include—

"(I) additions to the Savings Association Insurance Fund's reserve to provide for insurance losses during the calendar year, except that any adjustments to reserve which result in a reduction of such reserve shall be added; and

"(II) the insurance losses sustained in said calendar year.

"(5) INVESTMENT INCOME DEFINED.—The term 'investment income' as used herein means—

"(A) for the Bank Insurance Fund, interest, dividends, and net market gains earned on investments of the Bank Insurance Fund; and

"(B) for the Savings Association Insurance Fund, interest, dividends, and net market gains earned on investments of the Savings Insurance Fund.";

(8) by striking "bank" wherever it appears in subsections (e), (f), (g) and (i) and inserting "financial institution";

(9) in subsection (j)—

(A) in the last sentence of paragraph (1)—

(i) by inserting "(A)" before "any 'bank holding company' "; and

(ii) by inserting before the period the following: "; (B) any 'savings and loan holding company' which has control of any insured financial institution, and the appropriate Federal banking agency in the case of savings and loan holding companies shall be the Chairman of the Office of Savings Associations; and (C) any other company that controls an insured financial institution that is not a bank holding company or a savings and loan holding company";

(B) in paragraph (2)(A), by striking "failure" and inserting "default" and by striking "bank" wherever it appears and inserting "financial institution";

(C) in paragraph (2)(D), by inserting "unless it finds that an emergency exists," after the comma following the word "shall";

(D) in paragraph (7)—

(i) by striking "or" at the end of subparagraph (D);

(ii) by striking the period at the end of subparagraph (E) and inserting "; or"; and

(iii) by adding at the end the following:

"(F) the appropriate Federal banking agency determines that the proposed transaction would result in an adverse effect on the Bank Insurance Fund, or the Savings Association Insurance Fund.";

(E) by striking paragraph (17) and inserting the following:

"(17) APPLICABILITY.—This subsection shall not apply to—

"(A) a transaction subject to section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) or section 18 of this Act (12 U.S.C. 1828); or

"(B) the acquisition of a savings association which acquisition is subject to section 10 of the Home Owners' Loan Act of 1933."; and

(F) by adding at the end the following:

"(l) DEFINITIONS.—For purposes of this section—

"(1) the 'Bank Insurance Fund reserve ratio' is the ratio of the net worth of the Bank Insurance Fund to the value of the aggregate insured deposits held in all Bank Insurance Fund members;

"(2) the 'Savings Association Insurance Fund reserve ratio' is the ratio of the net worth of the Savings Association Insurance Fund to the value of the aggregate insured deposits held in all Savings Association Insurance Fund members;

"(3) 'Bank Insurance Fund member' means any insured financial institution other than a Savings Association Insurance fund member; and

"(4) 'Savings Association Insurance Fund member' means any financial institution the accounts of which were insured by the Federal Savings and Loan Insurance Corporation immediately prior to the enactment of the FIRRE Act, any insured savings association other than a Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act of 1933, and any other financial institution that is required to pay assessments into the Savings Association Insurance Fund.".

SEC. 209. FDIC CORPORATE POWERS.

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) is amended—

(1) by striking out the words "bank" and "banks" wherever they appear and inserting "financial institution" and "financial institutions", respectively; and

(2) by striking out the provisions of Paragraph Four after the phrase "as receiver of a State bank" and replacing them with the following: "other than as receiver under the provisions of section 11(e)(2) or 11(e)(3) and which involves only the preappointment rights of or obligations owing to depositors, creditors, or stockholders against or by such State financial institution under State law shall not be deemed to arise under the laws of the United States. Nothing in the foregoing shall limit the right of the Corporation to invoke the jurisdiction of a United States district court where the Corporation is acting as receiver of a State financial institution and that institution could have invoked such jurisdiction. No attachment or execution shall be issued against the Corporation or its property before final judgment in any suit, action, or proceeding in any State, county, municipal or United States court. The Board of Directors shall designate agents upon whom service of process may be made in any State, territory, or jurisdiction in which any insured bank is located.".

SEC. 210. ADMINISTRATION OF CORPORATION.

Section 10(b) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)) is amended—

(1) in the first sentence, by inserting after "or other institution" a comma and the following: "including a State savings association,";

(2) in the second sentence, by striking "insured Federal savings bank" and inserting "insured savings association".

SEC. 211. INSURANCE FUNDS.

Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1) and inserting the following:

"(1) On and after the effective date of the FIRRE Act, the Corporation shall insure the deposits of all insured financial institutions as provided in this Act. Except as provided in paragraph (2), the maximum amount of the insured deposit of any depositor shall be $100,000.";

(B) in paragraph (2)(b), by striking "(b)" and inserting "(B)" and by striking "time and savings".

(C) by adding at the end the following:

"(4) There are established two insurance funds both to be operated and administered by the Corporation and to be separately maintained and not commingled, which shall be used by the Corporation for the purposes of carrying out the insurance purposes of this Act in the manner set forth below:

"(A) On the effective date of the FIRRE Act, there is established a fund to be designated the Bank Insurance Fund. On that date, the Permanent Insurance Fund shall be dissolved and all the assets, debts, obligations, contracts, and other liabilities of the Permanent Insurance Fund, matured or unmatured, accrued, absolute, contingent, or otherwise shall hereby be transferred in their entirety to the Bank Insurance Fund. The Bank Insurance Fund shall be available to the Corporation for the uses and purposes herein provided with respect to the Bank Insurance Fund members. All amounts assessed Bank Insurance Fund members by the Corporation shall be deposited into the Bank Insurance Fund.

"(B)(i) On the effective date of the FIRRE Act, there is established a fund to be designated the Savings Association Insurance Fund. All amounts assessed Savings Association Insurance Fund members from the date of enactment of the FIRRE Act, and not required for the Financing Corporation or for the Resolution Funding Corporation pursuant to section 21 and 21B, respectively, of the Federal Home Loan Bank Act, or for the FSLIC Resolution Fund pursuant to section 11A of this Act, shall be covered into the Savings Association Insurance Fund. Beginning on January 1, 1992, no amounts assessed Savings Association Insurance Fund members shall be provided to the FSLIC Resolution Fund.

"(ii)(I) Beginning in fiscal year 1991, in order to provide funding to the Savings Association Insurance Fund, the Secretary of the Treasury shall, subject to the availability of appropriations, pay to the Fund the amounts per fiscal year, less the assessment paid by the savings associations to the Fund for such fiscal year, as set forth in the following table:

"Fiscal year ending September 30	Dollars in billions
1991	$2.0
1992	3.4
1993	4.6
1994	3.0
1995	4.0
1996	4.0
1997	4.0
1998	4.0
1999	3.0

"(II) When the Savings Association Insurance Fund reserve ratio equals or exceeds 1.25 percent no further amounts shall be paid to the Fund by the Secretary of the Treasury. The Secretary of the Treasury shall pay to the Savings Association Insurance Fund such additional funds as necessary, if any, to ensure that such Fund has the minimum net worth, as determined by the Corporation and the Secretary of the Treasury, set forth in the following table in each respective fiscal year as specified therein, subject to the provisions of the preceding sentence that at such time as the Savings Association Insurance Fund reserve ratio equals or exceeds 1.25 percent no further amounts shall be paid to the Fund by the Secretary of the Treasury:

"Fiscal year ending September 30	Dollars in billions
1991	$0.0
1992	1.0
1993	2.1
1994	3.2
1995	4.3
1996	5.4
1997	6.5
1998	7.6
1999	8.8

"(iii) Cumulative additions to obligations outstanding of the Savings Association Insurance Fund for fiscal years 1991 through 1999 shall not exceed $24,000,000,000.".

"(iv) There are authorized to be appropriated to the Secretary of the Treasury, without fiscal year limitation, such sums as may be necessary for payments as authorized by this Act.

"(v) The Corporation is authorized to borrow from the Federal Home Loan Banks, with the concurrence of the Chairman of the Office of Savings Associations, such funds as the Corporation deems necessary for the use of the Savings Association Insurance Fund, which borrowings shall be a direct liability of such Fund and shall be subject to the limitations in subsection (b) of section 15 of this Act. All such loans shall be made in accordance with section 11(k) of the Federal Home Loan Bank Act.

"(vi) The Savings Association Insurance Fund shall be available to the Corporation for the uses and purposes herein provided with respect to Savings Association Insurance Fund members. All amounts assessed Savings Association Insurance Fund members by the Corporation which do not include those required for the Financing Corporation or the Resolution Funding Corporation pursuant to the Federal Home Loan Bank Act, or for the FSLIC Resolution Fund pursuant to section 11A of this Act, shall be deposited into the Savings Association Insurance Fund.

"(5)(A) Any provision of this Act forbidding the commingling of the Bank Insurance Fund with the Savings Association Insurance Fund, or requiring the separate maintenance of the Bank Insurance Fund and the Savings Association Insurance Fund shall not—

"(i) limit or impair the authority of the Corporation to use the same facilities and resources other than the Bank Insurance Fund, the Savings Association Insurance Fund, or the FSLIC Resolution Fund in the course of conducting supervisory, regulatory, conservatorship, receivership, or liquidation functions with respect to banks and savings associations, or to integrate such functions; or

"(ii) limit or impair the Corporation's power to combine assets belonging to the estates of banks and savings associations for managerial purposes, or limit or impair the Corporation's power to dispose of such assets on an aggregate basis.

"(B)(i) The Corporation shall keep a full and complete accounting of all costs and expenses associated with the use of any facilities and resources used in the course of functions specified in subparagraph (A)(i). The Corporation shall allocate any such costs and expenses incurred by the Corporation with respect to Bank Insurance Fund members to the Bank Insurance Fund, and shall allocate any such costs and expenses incurred by the Corporation with respect to Savings Association Insurance Fund members to the Savings Association Insurance Fund.

"(ii) The Corporation shall keep a full and complete accounting of all costs and expenses associated with the management of any assets specified in subparagraph (A)(ii), and a full and complete accounting of all costs, expenses, and receipts associated with the disposition of such assets. The Corporation shall allocate any such costs, expenses, and receipts associated with assets belonging to Bank Insurance Fund members or to the estates of such members to the Bank Insurance Fund, and shall allocate any such costs, expenses, and receipts associated with assets belonging to Savings Association Insurance Fund members or to the estates of such members to the Savings Association Insurance Fund.

"(C) A personnel, administrative, or other overhead expense of the Corporation shall be allocated—

"(i) fully to the Bank Insurance Fund, if the expense was incurred directly as a result of the corporation's responsibilities solely with respect to insured banks;

"(ii) fully to the Savings Association Insurance Fund, if—

"(I) the expense was incurred directly as a result of the Corporation's responsibilities solely with respect to insured savings associations; or

"(II) the expense is associated with a bridge bank established to assume liabilities and receive assets of an institution under the jurisdiction of the Resolution Trust Corporation or insured by the Savings Association Insurance Fund;

"(iii) between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the relative degree to which the expense was incurred as a result of the activities of insured banks and insured savings associations; or

"(iv) between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the relative total assets as of the end of the preceding calendar year of insured banks and insured savings associations, if the Board of Directors is unable to make a determination under (i), (ii), or (iii) above.".

SEC. 212. FDIC RECEIVERSHIP POWERS.

(a) BASIC AUTHORITIES.—Section 11(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)) is amended to read as follows:

"(c) CORPORATION AS RECEIVER OR CONSERVATOR.—

"(1) IN GENERAL.—

"(A) AUTHORITY UNDER THIS SECTION.—Notwithstanding any other provision of law, the Corporation is authorized to accept appointment and act as receiver or conservator for financial institutions in default and shall have the authorities specified in this section upon appointment as set out in subsection (d) or (e). As receiver or conservator, the Corporation shall have the authorities and duties described in paragraphs (2) through (12).

"(B) AUTHORITY IN SPECIAL CASES.—In addition to any powers otherwise conferred by this section, the Corporation as receiver or conservator shall have with respect to cases with respect to which the Federal Savings and Loan Insurance Corporation appointed, or was itself appointed as, a receiver or conservator prior to January 1, 1989, all powers and authorities that were or would have been available to the Federal Savings and Loan Insurance Corporation immediately prior to the enactment of the FIRRE Act.

"(2) GENERAL AUTHORITIES.—The Corporation is authorized—

"(A) to take over the assets of, operate the financial institution, and perform all functions of the financial institution in its own name;

"(B) to exercise all the powers of the members, shareholders, directors, and officers of the financial institution and to conduct all business of the institution, including taking deposits;

"(C) to take such action as may be necessary to put the financial institution in a sound and solvent condition;

"(D) to conserve the assets of the financial institution;

"(E) to merge the financial institution with another insured financial institution;

"(F) to organize, in the case of a savings association, by application to the Chairman of the Office of Savings Associations a new Federal savings association to take over such assets or such liabilities as the Corporation may deem appropriate;

"(G) to organize, in the case of an insured bank, a bridge bank under subsection (i) or a new national bank under subsection (h);

"(H) to transfer any assets or liabilities of the financial institution in default (including assets or liabilities associated with any trust business), such transfer to be effective without any further approval, assignment or consent with respect thereto, except that when the transferee is another financial institution, the transfer must be approved by the appropriate Federal banking agency for the acquiring institution;

"(I) to place the financial institution in liquidation and to proceed to realize upon the assets of the financial institution, having due regard to the condition of credit in the locality;

"(J) to determine claims under the provisions set forth under subsection (1);

"(K) to exercise all powers and authorities specifically granted by the provisions of this Act and such incidental powers as shall be necessary to carry out the powers so granted; and

"(L) to exercise any combination of the powers enumerated in subparagraphs (A) through (K),

whichever shall appear to be in the best interests of the financial institution, its depositors, and the Corporation.

"(3) PAYMENT OF OBLIGATIONS.—The Corporation shall pay all valid credit obligations of the financial institution in accordance with this Act.

"(4) CLAIMS.—

"(A) IN GENERAL.—In cases of liquidation, or other closing or winding up of the affairs of a closed financial institution, the Corporation shall promptly publish a notice to the financial institution's creditors to present their claims, with proof thereof, to the receiver by a date specified in the notice (at least 90 days after first publication). The notice shall be published again approximately one month and two months respectively after first publication. Claims filed after the specified date shall be disallowed, and such disallowance shall be final. The receiver shall mail a similar notice at the time of first publication to any creditor shown on the financial institution's books at the creditor's last address appearing thereon or upon discovery of the name and address of a claimant not appearing on the financial institution's books within 30 days of discovery.

"(B) ALLOWANCE OF CLAIMS.—The Corporation shall allow any claim seasonably received and proved to its satisfaction. The receiver may wholly or partly disallow any creditor claim or claim of security, preference, or priority not so proved, and shall notify the claimant of the disallowance and the reason therefore. Mailing notice of the disallowance to the claimant's last address appearing on the financial institution's books or on the proof of claim shall be sufficient notice. Unless, within 30 days after notice is mailed, the claimant files a written objection to the disallowance, disallowance shall be final. Those claims to which an objection is properly and timely filed shall be decided in accordance with the provisions of subsection (1).

"(C) PAYMENTS.—The Corporation may pay creditor claims which are allowed by the receiver or approved by a final determination by the receiver in accordance with subsection (1), from time to time, in the receiver's discretion, to the extent funds are available, in such manner and amounts as are authorized under this Act.

"(5) SUBROGATION.—The Corporation shall pay to itself for its own account such portion of the amounts realized from any liquidation as it shall be entitled to receive on account of its subrogation to the claims of depositors, and it shall pay to depositors and other creditors the net amounts available for distribution to them.

"(6) DIVIDENDS.—The Corporation may, in its discretion, pay dividends on proved claims at any time, and no liability shall attach to the Corporation itself or as such receiver by reason of any such payment for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

"(7) STAYS.—The Corporation may request a stay for a period of up to 45 days after the appointment of the receiver as to any judicial action or proceeding to which the receiver or the financial institution in default is or becomes a party. Upon petition, the court shall grant such stay as to all parties.

"(8) REPUDIATION OF CONTRACTS.—

"(A) The Corporation is authorized in any case in which it is liquidating or otherwise closing or winding up the affairs of a closed financial institution to disaffirm or repudiate any contract or lease the performance of which the Corporation in its discretion considers to be burdensome and the disaffirmance or repudiation of which will promote the orderly administration of the financial institution's affairs.

"(B) If the Corporation repudiates or disaffirms any contract other than as provided in subparagraph (C), (D), or (E), the claim for damages resulting from such repudiation or disaffirmance shall be limited to actual direct compensatory damages, and, in the case of contracts and agreements referred to in subparagraph (F) of this paragraph, shall be measured as of the date of disaffirmance or repudiation, and there shall be no liability either on the part of the Corporation or on the part of the estate of the failed financial institution for any other damages, including punitive, exemplary, or consequential damages or similar damages, or damages for lost profits or opportunity, or damages for pain and suffering. With respect to contracts and agreements under subparagraph (F) of this paragraph, lost profits and opportunity shall not be deemed to include normal costs of cover or other reasonable measures of damages utilized in the industries for such contracts and agreements. A claim under this subparagraph is a claim against the estate of the financial institution to be paid in accordance with subsections (k) and (l), and shall be deemed to have arisen on the date of the Corporation's appointment as conservator or receiver.

"(C) If the Corporation disaffirms or repudiates a lease under which the financial institution was the lessee, neither the Corporation nor the estate of the financial institution will incur any liability with respect to such lease, except that the lessor shall be entitled to the contractual rent for the period from the appointment of the receiver or conservator to the date the notice of disaffirmance or repudiation is mailed or effective and the lessor shall have a claim against the estate of the institution to be paid in accordance with subsections (k) and (l) of this section for any unpaid rent (but shall have no claims for damages under acceleration or other penalty provisions) due as of the date of the appointment of the receiver or conservator.

"(D) If the Corporation repudiates any unexpired written lease of real property of the financial institution under which the institution is the lessor and the lessee is not in default, the lessee under such lease may treat the lease as terminated by such repudiation; or, in the alternative, the lessee may remain in possession of the leasehold interest for the balance of the term of the lease. If such lessee remains in possession under the provisions of this paragraph, he shall continue to pay the contractual rent, and may offset against the rent unpaid for the balance of the term after the date of the repudiation of the lease, any damages occurring after such date caused by the nonperformance of any obligation of the financial institution under the lease after such date, but the lessee does not have any rights against the estate on account of any damages arising after such date from the repudiation, other than such offset.

"(E) If the Corporation repudiates a written contract of the financial institution for the sale of real property, which satisfies the provisions of section 13(e), under which the purchaser is in possession and not in default, such purchaser may treat the contract as terminated, or in the alternative, may remain in possession of such real property. If the purchaser remains in possession, he shall continue to make all payments due under the contract, but may offset against such payments any damages occurring after the date of the repudiation of the contract caused by the nonperformance of any obligation of the institution contained in the contract after such date, but the purchaser does not have any rights against the estate on account of any damages arising after such date from the repudiation, other than such offset; and the Corporation shall deliver title to the purchaser in accordance with the provisions of the contract, but is relieved of all other obligation to perform under the contract. Nothing herein is intended to limit the Corporation's right to assign such contract and sell the property subject to the contract and the provisions of this paragraph. If such an assignment and sale is consummated, the Corporation shall have no further liability.

"(F) CERTAIN MARKET-SENSITIVE CONTRACTS.—

"(i) Subject to subparagraph (L) of this paragraph, but notwithstanding any other provision of this Act (other than subsections (i)(4)(I) and (l)(4) of this section and section 13(e) of this Act) or any other provision of Federal or State law, no person shall be stayed or prohibited from exercising any rights such person has to cause the termination or liquidation of a securities contract, commodity contract, forward contract, repurchase agreement, or swap agreement with a financial institution in receivership or liquidating conservatorship based upon the appointment of the Corporation as receiver or conservator for the purpose of liquidation, or any rights under any security arrangement relating to the foregoing, or any rights to set off or net out any termination values, payment amounts or other transfer obligations arising under or in connection with one or more such contacts and agreements, including any master agreement for such contracts or agreements. If any party to such a contract or agreement shall bring any judicial action or proceeding against the receiver or the financial institution in default, the provisions of subsection (c)(7) of this section shall be applicable.

"(ii) Notwithstanding subparagraph (G) of this paragraph, the Corporation, in its corporate, receivership and conservatorship capacities, shall have no authority to avoid any transfer of money or other property made in connection with a contract or agreement referred to in the foregoing clause (i) except upon a showing of actual intent by such party to hinder, delay, or defraud such financial institution's creditors.

"(iii) For purposes of clauses (i) and (ii), the following terms shall have the following meanings:

"(I) 'Securities contract' has the meaning ascribed to such term in section 741(7) of title 11, United States Code, for purposes of section 555 of title 11, United States Code. For the purposes of this subparagraph, the term 'security' as used in such section 741(7) shall have the meaning given to such term in section 101(43) of title 11, United States Code, and shall include 'mortgage-related securities' (as such term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)), mortgage loans, and interests therein. A participation in a commercial mortgage loan does not itself constitute a 'securities contract', unless the Corporation determines by regulation, rule, resolution or order to include a participation in a commercial mortgage loan itself within such term.

"(II) 'Commodity contract' and 'forward contact' have the meanings ascribed to such terms for purposes of section 556 of title 11, United States Code.

“(III) ‘Repurchase agreement’ has the meaning given to such term in section 101(41) of title 11, United States Code, for purposes of section 559 of title 11, United States Code, except that for the purpose of this subparagraph the phrase ‘ “mortgage-related securities” (as such term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)), mortgage loans, and interests therein’ shall be deemed to be inserted after the word ‘States’ the second time the word ‘States’ appears in such definition, inserted before the word ‘with’ in such definition, and inserted before the word ‘as’ the second time the word ‘as’ appears in such definition. A participation in a commercial mortgage loan does not itself constitute a ‘repurchase agreement’, unless the Corporation determines by regulation, rule, resolution, or order to include a participation in a commercial mortgage loan itself within such term.

“(IV) ‘Swap agreement’ means an agreement, including terms and conditions incorporated by reference therein, which is a rate swap agreement, basis swap, forward rate agreement, interest rate future, interest rate option purchased, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, currency option purchased or any other similar agreement or combination thereof (including any option to enter into any of the foregoing), and a master agreement for any of the foregoing together with all supplements shall be considered one swap agreement.

“(V) ‘Transfer’ has the meaning given to such term in section 101(5) of title 11, United States Code.

“(G) Nothing in this paragraph is intended to allow the avoidance of any legally valid security interest in the assets of the institution except where such an interest is taken in contemplation of the institution’s insolvency or with the intent to hinder, delay, or defraud the institution or its creditors.

“(H) Nothing in this paragraph is intended to affect the validity of or right to collect on any extensions of credit by the Corporation, a Federal Home Loan Bank, or a Federal Reserve Bank to the institution or any security interest in any assets of the institution securing any such extensions of credit.

“(I) The Corporation shall determine whether or not to exercise the rights of repudiation under this paragraph within a reasonable period following its appointment as conservator or receiver.

"(J) If, pending its determination whether or not to exercise the right of repudiation under this paragraph, the Corporation, without prejudice to its right of repudiation, accepts performance by the other party to a contract for services, the Corporation shall pay the other party under the terms of the contract for the services performed as an administrative expense of the conservatorship or receivership. Any claim of such other party for services performed prior to the Corporation's appointment as conservator or receiver shall be a claim against the estate of the financial institution to be paid in accordance with subsections (k) and (l) and shall be deemed to have arisen as of the date of the Corporation's appointment as conservator or receiver.

"(K) TRANSFERS.—In effecting any transfer of assets or liabilities of a financial institution in default, the Corporation as receiver or conservator shall either—

"(i) transfer to a single financial institution (other than a financial institution in default) all Financial Contracts (as defined in subparagraph (L)) of a party and its affiliates with such financial institution in default, all claims of a party and its affiliates under Financial Contracts against such financial institution in default (other than claims subordinated by any such Financial Contracts to the claims of general unsecured creditors), all claims of such financial institution in default against such party and its affiliates under all Financial Contracts, and all property securing claims under all such Financial Contracts; or

"(ii) transfer no Financial Contracts of a party and its affiliates with a financial institution in default, no claims of a party and its affiliates under Financial Contracts against such financial institution in default, no claims of such financial institution in default against such party and its affiliates under Financial Contracts, and no property securing claims under such Financial Contracts.

"(L) NOTICE.—If a party to a contract or agreement specified in subparagraph (F) of this paragraph is notified by the Corporation as receiver or conservator by the close of business on the Business Day following its first appointment as such that it has transferred to a single financial institution (other than a financial institution in default) all Financial Contracts of a party and its affiliates with the financial institution for which it has been appointed as receiver or conservator, all claims of a party and its affiliates under Financial Contracts against such financial institution in default (other than claims subordinated by any such Financial Contracts to the claims of general unsecured creditors), all claims of such financial institution in default against such party and its affiliates under all Financial Contacts, and all property securing claims under all such Financial Contracts, then the provisions of subparagraph (F)(i) shall not apply. For purposes of this subparagraph (L), the Corporation as receiver or conservator shall be deemed to have notified a party if it has taken steps reasonably calculated to provide notice to such party. The Corporation as receiver or conservator shall use its best efforts to notify a party whether it has effected a transfer of assets and liabilities of a financial institution in default in accordance with subparagraph (K)(i) prior to 12:00 a.m. local time on the Business Day following its first appointment. As used in this subparagraph (L), 'Business Day' means a day other than a Saturday, Sunday, or day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed. As used in this subparagraph (L), in subparagraph (K), and in subparagraph (N), 'Financial Contract' means a contract or agreement referred to in subparagraph (F) of this subsection and any other similar contract or agreement (including contracts or agreements relating to hedging, risk management, funding or capital markets transactions).

"(M) PREEXISTING PROTECTIONS FOR SAVINGS ASSOCIATIONS.—

"(i) The following resolutions of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation shall be binding, with respect to savings associations, on the Corporation in its corporate, receivership, and conservatorship capacities, to the same extent they were binding on the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation, in its corporate, receivership, and conservatorship capacities and may only be rescinded or otherwise amended in accordance with the terms thereof:

"(I) Resolutions relating to the treatment of 'Repos', 'Financial Contracts' and 'special accounts' (including security arrangements in connection with special accounts) of American Savings and Loan Association, Stockton, California, American Savings, a Federal Savings and Loan Association, Stockton, California, New West Federal Savings and Loan Association, Stockton, California, Western Federal Savings and Loan Association, Phoenix, Arizona, and Gibraltar Savings, Beverly Hills, California; and

"(II) Resolution, dated August 31, 1988, regarding the treatment of certain subsidiaries of savings associations;

"(ii) The following letters of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation, general counsels thereto and representatives thereof, shall be and remain binding, with respect to savings associations, on the Corporation in its corporate, receivership and conservatorship capacities, to the same extent they were binding on the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation, in its corporate, receivership and conservatorship capacities, in respect of any party that, on or prior to the date of enactment of the FIRRE Act, relied in good faith on one or more of such letters in entering into any transaction described therein or in incurring or purchasing any obligation or otherwise extending any credit in connection with any such transaction:

"(I) Letters relating to the treatment of security arrangements in connection with 'special accounts' of American Savings and Loan Association, Stockton, California, American Savings, a Federal Savings and Loan Association, Stockton, California, New West Federal Savings and Loan Association, Stockton, California, Western Federal Savings and Loan Association, Phoenix, Arizona, and Gibraltar Savings, Beverly Hills, California;

"(II) Letters of March 23, 1984, January 18, and May 29, 1985, from Norman H. Raiden, Esq., General Counsel to the Federal Home Loan Bank Board, regarding the substantive consolidation of subsidiaries of savings associations;

"(III) Letters of February 22 and March 1, 1988 from Jordan Luke, Esq., General Counsel to the Federal Home Loan Bank Board, regarding the characterization of certain asset sales; and

"(IV) Letter of November 19, 1987, from Stuart D. Root, Esq., Executive Director of the Federal Savings and Loan Insurance Corporation and Jordan Luke, Esq., General Counsel to the Federal Home Loan Bank Board, clarifying a letter of October 13, 1987 from the Securities Industry Association to Messrs. Root and Luke, in each case regarding documentation supporting payment of insured deposits of savings associations.

No such letter shall be binding on the Corporation in respect of any such transaction entered into, or in respect of, any obligations incurred or purchased or credit extended in connection therewith, after the date of enactment of the FIRRE Act.

"(N) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR NOT FOR THE PURPOSE OF LIQUIDATION.—Notwithstanding any other provision of this Act (other than subsections (c)(9), (i)(4)(I), and (l)(4) of this section and section 13(e) of this Act) or any other provision of Federal or State law, no person shall be stayed or prohibited from exercising any rights such person has to cause the termination, liquidation or acceleration of Financial Contracts with a financial institution in a nonliquidating conservatorship based upon a default under such Financial Contracts enforceable under applicable noninsolvency law, or any rights under any security arrangement relating to such Financial Contracts, or any rights to setoff or net out any termination values, payment amounts or other transfer obligations arising under or in connection with such Financial Contracts. If any party to a Financial Contract shall bring any judicial action or proceeding against the financial institution in default, the provisions of section 11(c)(7) of this Act shall apply.

"(9) ENFORCEMENT OF CONTRACTS.—The Corporation may enforce any contract, other than those of a director's or officer's liability insurance contract or a financial institution bond, entered into by the financial institution notwithstanding any provision of the contract providing for termination, default, acceleration, exercise of rights upon, or soley by reason of insolvency or the appointment of receiver or conservator. Nothing in this paragraph shall impair or affect any right, if any, of the Corporation that may have existed immediately prior to the enactment of the FIRRE Act to enforce or recover a director's or officer's insurance policy contract or financial institution bond issued or otherwise entered into prior to enactment of the FIRRE Act.

"(10) ACCOUNTING.—The Corporation shall keep an accounting of each receivership estate and conservatorship estate or other disposition of institutions in default in the manner which it deems in its discretion to be appropriate and make such accounting available, on an annual basis, to the shareholders of the financial institution, the Secretary of the Treasury, the Comptroller General, and the agency that appointed the Corporation as receiver or conservator, upon request.

"(11) DISTRIBUTION AFTER PAYMENT OF ALL CLAIMS.—In any case in which funds remain after all depositors, creditors, other claimants, and administrative expenses are paid, the Corporation shall distribute such funds to the financial institution's shareholders or members along with the accounting specified in paragraph (I).

"(12) RECORDS.—The Corporation may, any time 7 years after its appointment as receiver of a financial institution, destroy any records of such institution which the Corporation in its discretion deems to be unnecessary. The Corporation shall not destroy any records which may be needed for any criminal prosecution or civil or administrative proceeding.

"(13) STATE HOUSING FINANCE AGENCIES.—The Corporation is authorized to enter into contracts with State housing finance agencies for the sale of mortgage related assets of the financial institutions in default (including assets and liabilities associated with any trust business), such contracts to be effective in accordance with their terms without any further approval, assignment, or consent with respect thereto. In evaluating the disposition of such assets, the Corporation shall consider—

"(A) the State housing finance authority's ability to acquire and service current, delinquent, and defaulted mortgage related assets;

"(B) the State housing finance authority's ability to further national housing policies;

"(C) the State housing finance authority's sensitivity to the impact of the sale of mortgage related assets upon State and local communities;

"(D) the costs to the Federal Government associated with alternative ownership or dispositions of the mortgage related assets;

"(E) the minimization of future guaranties which may be required of the Federal Government;

"(F) the maximization of mortgage related asset values; and

"(G) the utilization of institutions currently established in mortgage related asset market activities.

"(14) STATUTES OF LIMITATION.—Notwithstanding any contractual provisions to the contrary, the applicable statute of limitations with regard to any action brought by the Corporation as receiver or conservator shall be—

"(A) the period provided for in sections 2415 and 2416 of title 28, United States Code,

"(B) the applicable State statute of limitations, or

"(C) the expiration of 3 years following the date of the appointment of the Corporation as receiver or conservator,

whichever provides for the longest limitations period.".

(b) RECEIVER OR CONSERVATOR OF FEDERAL FINANCIAL INSTITUTION.—Section 11(d) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)) is amended to read as follows:

"(d) CORPORATION AS RECEIVER OR CONSERVATOR OF FEDERAL FINANCIAL INSTITUTIONS.—

"(1) IN GENERAL.—Whenever a receiver or conservator is appointed for an insured Federal or District financial institution by the authority having supervision of such financial institution for the purpose of liquidation or winding up its affairs, the Corporation shall be appointed, and shall accept appointment, as such receiver or conservator. The Corporation may, at the discretion of the supervisory authority, be appointed conservator not for the purpose of liquidation or winding up the financial institution's affairs, and the Corporation may accept such appointment.

"(2) POWERS AND DUTIES.—As a receiver or conservator appointed under this subsection, the Corporation shall have all powers and duties set forth in this Act, and such other powers and duties possessed by receivers and conservators for Federal financial institutions under any other provisions of law, in addition to and not in derogation of the powers conferred in this Act.

"(3) RELATIONSHIP TO OTHER AGENCIES.—As such receiver or conservator, the Corporation shall not be subject to the direction or supervision of any other agency or department in the exercise of its rights, powers, and privileges as receiver or conservator. If the financial institution continues to operate in conservatorship, the institution shall remain subject to the supervision of the appropriate Federal banking agency.".

(c) CORPORATION AS RECEIVER OR CONSERVATOR OF STATE FINANCIAL INSTITUTIONS.—Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended to read as follows:

"(e) CORPORATION AS RECEIVER OR CONSERVATOR OF STATE FINANCIAL INSTITUTIONS.—

"(1) In general.—(A) Whenever the authority having supervision of any insured State financial institution (except a District financial institution) appoints a receiver or conservator for such State financial institution and tenders appointment to the Corporation, the Corporation may accept appointment as receiver or conservator.

"(B) As a receiver or conservator appointed under this subsection, the Corporation shall possess all the rights, powers, and privileges granted by State law to a receiver or conservator of a State financial institution of any kind, in addition to and not in derogation of the powers conferred upon the Corporation under subsection (c).

"(C) As such receiver or conservator, the Corporation shall not be subject to the direction or supervision of any other agency or Department, State or Federal, in the exercise of its rights, powers, and privileges. If the financial institution continues to operate in conservatorship, the institution shall remain subject to the supervision of the appropriate Federal banking agency.

"(2) Appointment by chairman of the office of savings associations.—Whenever the Chairman of the Office of Savings Associations appoints a conservator or receiver under the provisions of section 5(d)(2)(C) of the Home Owners' Loan Act of 1933 for the purpose of liquidation or winding up a savings association's affairs, the Resolution Trust Corporation shall be appointed for the period from the date of enactment of the FIRRE Act until 3 years thereafter, and the Corporation shall be appointed thereafter. The Corporation or the Resolution Trust Corporation as appropriate, may, at the discretion of the supervisory authority, be appointed conservator not for the purpose of liquidation or winding up the savings association's affairs, and the Corporation may accept such appointment.

"(3) Power and jurisdiction.—The Corporation shall have power and jurisdiction to appoint itself as sole conservator or receiver of a State savings association if the Corporation or the Resolution Trust Corporation as appropriate determines—

"(A) that—

"(i) a conservator, receiver, or other legal custodian has been or is hereafter appointed for an insured State other than by the Chairman of the Office of Savings Associations and that the appointment of such conservator, receiver, or custodian, or any combination thereof, has been outstanding for a period of at least 15 consecutive days, and that one or more of the depositors in such institution is unable to obtain a withdrawal of a deposit, in whole or in part; or

"(ii) an insured State savings association has been closed by or under the laws of any State; and

"(B) that one or more of the grounds specified in paragraph (2)(A) of section 5(d) of the Home Owners' Loan Act of 1933 existed with respect to such savings association at the time a conservator, receiver, or other legal custodian was appointed, or at the time such savings association was closed, or exists thereafter during the appointment of the conservator, receiver, or other legal custodian or while the savings association is closed.

"(4) AUTHORITY IN CERTAIN CASES.—In any case where the Corporation is appointed conservator or receiver of an insured State financial institution—

"(A) the provisions of this Act shall be applicable in the same manner and to the same extent as if such institution were a Federal institution with respect to which the Corporation had been appointed conservator or receiver; and

"(B) the Corporation shall have authority to liquidate such institution in an orderly manner or to make such other disposition of the matter as it deems to be in the best interests of the institution, its depositors, and the Corporation.

"(5) CONSTRUCTION OF SUBSECTION.—The authority conferred by paragraphs (2) and (3) shall be in addition to, and not a limitation upon, appointment under paragraph (1).".

(d) PAYMENT OF INSURED DEPOSITS.—Section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f)) is amended to read as follows:

"(f) PAYMENT OF INSURED DEPOSITS.—

"(1) IN GENERAL.—In cases of the liquidation or other closing or winding up of the affairs of an insured financial institution in default or an insured branch of a foreign bank in default, payment of the insured deposits in such financial institution or branch shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g) of this section either by cash or by making available to each depositor a transferred deposit in a new financial institution in the same community or in another insured financial institution in an amount equal to the insured deposit of such depositor. All payments made pursuant to this section on account of a Bank Insurance Fund member shall be made only from the Bank Insurance Fund, and all payments made pursuant to this section on account of a Savings Association Insurance Fund member shall be made only from the Savings Association Insurance Fund.

"(2) PROOF OF CLAIMS.—The Corporation, in its discretion, may require proof of claims to be filed and may approve or reject such claims. In the case of a disputed claim, the Corporation shall have the power to resolve such disputed claims according to rules and regulations established by the Corporation for that purpose. Final determination made by the Corporation shall be reviewable by the Court of Appeals for the District of Columbia Circuit or the Court of Appeals for the circuit where the financial institution is located and shall be upheld unless found to be arbitrary or capricious. Any request for review of a final determination by the Corporation shall be filed with the appropriate Circuit Court of Appeals not later than 60 days after such determination is ordered. In the absence of rules and regulations, the Corporation may require the final determination of a court of competent jurisdiction before paying such claim.".

(e) SUBROGATION.—Section 11(g) of the Federal Deposit Insurance Act (12 U.S.C. 1821(g)) is amended to read as follows:

"(g) SUBROGATION.—Notwithstanding any other provision of State law, the Corporation, upon the payment to any depositor as provided in subsection (f) of this section, or the assumption of any deposit by another insured financial institution pursuant to section 11 or section 13, shall be subrogated to all rights of the depositor against the financial institution or branch to the extent of such payment or assumption. Such subrogation shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such financial institution or branch and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain such claim for any uninsured or unassumed portion of the deposit. With respect to any bank which closes after May 25, 1938, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon his stock in such bank; but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated. If the Corporation is not appointed pursuant to subsection (e)(2), or determines not to invoke the authority conferred in subsection (e)(3), the rights of depositors and other creditors of any State financial institution shall be determined in accordance with the applicable provisions of State law.".

(f) TECHNICAL AMENDMENTS.—Section 11(h) of the Federal Deposit Insurance Act (12 U.S.C. 1821(h)) is amended—

(1) by striking "closed bank" wherever it appears and inserting "financial institution in default";

(2) in paragraph (1), by striking "closing of an insured bank" and inserting "default of an insured bank"; and

(3) in paragraph (4), by striking "closed insured bank" and inserting "insured bank in default".

SEC. 213. BRIDGE BANKS.

Section 11(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(i)) is amended to read as follows:

"(i) BRIDGE BANKS.—

"(1) ORGANIZATION.—

"(A) PURPOSE.—When one or more insured banks are in default or in danger of default, the Corporation may, in its discretion, organize a bridge bank or banks with respect thereto and upon the granting of a charter to such bridge bank, the bridge bank may—

"(i) assume such deposits of such insured bank or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate, except that if any insured deposits of a bank are assumed, all insured deposits of that bank shall be assumed;

"(ii) assume such other liabilities (including liabilities associated with any trust business) of such insured financial institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion determine to be appropriate;

"(iii) purchase such assets (including assets associated with any trust business) of such insured financial institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; and

"(iv) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this Act.

"(B) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge bank as approved by the Corporation shall be executed by three representatives designated by the Corporation.

"(C) NATIONAL BANK.—A bridge bank shall be organized as a national bank.

"(D) INTERIM DIRECTORS.—A bridge bank shall have an interim board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

"(2) CHARTERING.—

"(A) CONDITIONS.—A bridge bank may be chartered by the Comptroller of the Currency as a national bank only if the Board of Directors determines that—

"(i) the amount which is reasonably necessary to operate such bridge bank will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, one or more insured banks in default or in danger of default with respect to which the bridge bank is chartered;

"(ii) the continued operation of such insured bank or banks in default or in danger of default with respect to which the bridge bank is chartered is essential to provide adequate banking services in the community where each such bank in default or in danger of default is located; or

"(iii) the continued operation of such insured bank or banks in default or in danger of default with respect to which the bridge bank is chartered is in the best interest of the depositors of such bank or banks in default or in danger of default or the public.

"(B) INSURED NATIONAL BANK.—A bridge bank shall be an insured bank from the time it is chartered as a national bank.

"(C) BRIDGE BANK TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge bank shall be treated as an insured bank in default at such times and for such purposes as the Corporation may, in its discretion, determine.

"(D) MANAGEMENT.—A bridge bank, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

"(E) BYLAWS.—The board of directors of a bridge bank shall adopt such bylaws as may be approved by the Corporation.

"(3) TRANSFER OF ASSETS AND LIABILITIES.—

"(A) IN GENERAL.—Upon the granting of a charter to a bridge bank pursuant to this subsection, the Corporation, as receiver, or any other receiver appointed with respect to any insured financial institution in default with respect to which the bridge bank is chartered may transfer any assets and liabilities of such financial institution in default to the bridge bank in accordance with paragraph (1) of this subsection. Thereafter, the Corporation, as receiver, or any other receiver appointed with respect to an insured financial institution in default may transfer any assets and liabilities of such insured financial institution in default as the Corporation may, in its discretion, determine to be appropriate in accordance with paragraph (1) of this subsection. For purposes of this paragraph, the trust business, including fiduciary appointments, of any insured financial institution in default is included among its assets and liabilities. The transfer of any assets or liabilities, including those associated with any trust business, of an insured financial institution in default transferred to a bridge bank shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

"(B) SENSE OF CONGRESS REGARDING CONTINUING OPERATIONS.—It is the sense of the Congress that, in order to prevent unnecessary hardship or losses to the customers of any insured financial institution in default with respect to which a bridge bank is chartered, especially creditworthy farmers, small businesses, and households, the Corporation should attempt to—

"(i) continue to honor commitments made by the financial institution in default to creditworthy customers, and

"(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

"(4) POWERS OF BRIDGE BANKS.—Each bridge bank chartered under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank, except that—

"(A) the Corporation may—

"(i) remove the interim directors and directors of a bridge bank;

"(ii) fix the compensation of members of the interim board of directors and the board of directors and senior management, as determined by the Corporation in its discretion, of a bridge bank; and

"(iii) waive any requirement established under section 5145, 5146, 5147, 5148, or 5149 of the Revised Statutes (relating to directors of national banks) or section

31 of the Banking Act of 1933 which would otherwise be applicable with respect to directors of a bridge bank by operation of paragraph (2)(B);

"(B) the Corporation may indemnify the representatives for purposes of paragraph (1)(B) and the interim directors, directors, officers, employees, and agents of a bridge bank on such terms as the Corporation determines to be appropriate;

"(C) no requirement under section 5138 of the Revised Statutes or any other provision of law relating to the capital of a national bank shall apply with respect to a bridge bank;

"(D) the Comptroller of the Currency may establish a limitation on the extent to which any person may become indebted to a bridge bank without regard to the amount of the bridge bank's capital or surplus;

"(E)(i) the board of directors of a bridge bank shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Corporation;

"(ii) the board of directors of a bridge bank may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Corporation;

"(F) a bridge bank shall not be required to purchase stock of any Federal Reserve bank;

"(G) the Comptroller of the Currency shall waive any requirement for a fidelity bond with respect to a bridge bank at the request of the Corporation;

"(H) any action to which a bridge bank becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a financial institution in default shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge bank;

"(I) no agreement which tends to diminish or defeat the right, title or interest of a bridge bank in any asset of an insured financial institution in default acquired by it shall be valid against the bridge bank unless such agreement—

"(i) shall be in writing,

"(ii) shall have been executed by such insured financial institution in default and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by such insured financial institution in default or if the financial institution is the borrower under such agreement, the agreement was executed prior to or contemporaneously with such borrowing,

"(iii) shall have been approved by the board of directors of such insured financial institution in default or its loan committee, which approval shall be reflected in the minutes of said board or committee, and "(iv) shall have been, continuously from the time of its execution, an official record of such insured financial institution in default; and

"(J) except with the prior approval of the Corporation, a bridge bank may not, in any transaction or series of transactions, issue capital stock or be a party to any merger, consolidation, disposition of assets or liabilities, sale or exchange of capital stock, or similar transaction, or change its charter.

"(5) CAPITAL.—

"(A) NO CAPITAL REQUIRED.—The Corporation shall not be required to purchase any capital stock of a bridge bank.

"(B) OPERATING FUNDS IN LIEU OF CAPITAL.—Upon the organization of a bridge bank, and thereafter, as the Board of Directors may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge bank, upon such terms and conditions and in such form and amounts as the Corporation may in its discretion determine, funds for the operation of the bridge bank in lieu of capital.

"(C) AUTHORITY TO ISSUE CAPITAL STOCK.—Whenever the Board of Directors determines it is advisable to do so, the Corporation shall cause capital stock of a bridge bank to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

"(6) NO FEDERAL STATUS.—

"(A) AGENCY STATUS.—A bridge bank is not an agency, establishment, or instrumentality of the United States.

"(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a bridge bank are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a bridge bank shall not—

"(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law, or

"(ii) receive any salary or benefits for service in any such capacity with respect to a bridge bank in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

"(7) ACQUISITION.—

"(A) IN GENERAL.—The responsible agency shall notify the Attorney General of any transaction involving the merger or sale of a bridge bank requiring approval under section 13(c) and if a report on competitive factors is requested within 10 days, such transaction may not be consummated before the fifth calendar day after the date of approval by the responsible agency with respect thereto. If the responsible agency has found that it must act immediately to prevent the probable failure of one of the financial institutions involved, the preceding sentence does not apply and the transaction may be consummated immediately upon approval by the agency.

"(B) BY OUT-OF-STATE HOLDING COMPANY.—Any financial institution, including an out-of-State financial institution, or any out-of-State financial institution holding company may acquire and retain the capital stock or assets of, or otherwise acquire and retain a bridge bank if the bridge bank at any time had assets aggregating $500,000,000 or more, as determined by the Corporation on the basis of the bridge bank's reports of condition or on the basis of the last available reports of condition of any insured financial institution in default, which institution has been acquired, or whose assets have been acquired, by the bridge bank. The acquiring entity may acquire the bridge bank only in the same manner and to the same extent as such entity may acquire an insured bank in default under section 13(f)(2).

"(8) CORPORATE EXISTENCE OF BRIDGE BANK.—Subject to paragraphs (9) and (10) of this subsection, the corporate existence of a bridge bank shall terminate at the end of the 2-year period following the date it was granted a charter. The Board of directors may, in its discretion, extend the corporate existence of the bridge bank for 3 additional one-year periods.

"(9) TERMINATION OF BRIDGE BANK STATUS.—A bridge bank shall terminate its status as such upon the earliest to occur of the following—

"(A) the merger or consolidation of the bridge bank with a financial institution that is not a bridge bank. In connection with such a transaction, the bridge bank may request conversion of its charter to that of a financial institution that is not a bridge bank;

"(B) the sale of all or substantially all of the capital stock of the bridge bank to an entity other than the Corporation and other than another bridge bank;

"(C) the assumption of all or substantially all of the deposits and other liabilities of the bridge bank by a financial institution holding company or a financial institution that is not a bridge bank, or the acquisition of all or substantially all of the assets of the bridge bank by a financial institution holding company, a financial institution that is not a bridge bank, or other entity as permitted under applicable law;

"(D) the dissolution of the bridge bank by the Corporation in accordance with paragraph (10) of this subsection prior to the initial two-year period of corporate existence of the bridge bank and any extension thereof in accordance with paragraph (8) of this subsection; and

"(E) the expiration of the initial 2-year period of corporate existence of the bridge bank and any extension thereof in accordance with paragraph (9) of this subsection.

"(10) Dissolution of bridge bank.—

"(A) In general.—Notwithstanding any other provision of State or Federal law—

"(i) the Board of Directors may, in its discretion, dissolve a bridge bank in accordance with this paragraph at any time during the corporate existence of a bridge bank if the Board of Directors determines that the amount which is reasonably necessary to dissolve the bridge bank will not exceed the amount which is reasonably necessary to either continue operation of the bridge bank or effect a transaction with respect to the bridge bank as contemplated in subparagraph (A), (B), or (C) of paragraph (9);

"(ii) the Board of Directors may, in its discretion, commence such dissolution proceedings in accordance with this paragraph with respect to a bridge bank as the Board of Directors determines to be necessary following the consummation of a transaction contemplated in subparagraph (B) or (C) of paragraph (9); and

"(iii) the Board of Directors shall commence dissolution proceedings in accordance with this paragraph upon the expiration of the period of corporate existence of a bridge bank as provided in paragraph (8) of this subsection.

"(B) Procedures.—The Comptroller of the Currency shall appoint the Corporation receiver for a bridge bank upon certification by the Board of Directors to the Comptroller of the Currency of its determination to dissolve the bridge bank. The Corporation as such receiver shall wind up the affairs of the bridge bank in conformity with the provisions of law relating to the liquidation of closed national banks. With respect to any such bridge bank, the Corporation as such receiver shall have all the rights, powers, and privileges now possessed or hereafter granted by law to a receiver of any insured financial institution and notwithstanding any other provision of law in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

"(11) Miscellaneous.—

"(A) Single state of operation.—Each bridge bank established under this subsection may operate branches in only one State.

"(B) Multiple bridge banks.—Subject to paragraph (1)(A)(i), the Corporation may, in the Corporation's discretion, organize 2 or more bridge banks under this subsection to assume any deposits of, assume any other liabilities of, and purchase any assets of a single financial institution in default.".

(b) Technical Amendment.—Section 11(j) of the Federal Deposit Insurance Act (12 U.S.C. 1821(j)) is amended by striking "closed bank" and inserting "financial institution in default".

SEC. 214. VALUATION OF CLAIMS AND REVIEW.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end thereof the following new subsections:

"(k) VALUATION OF CLAIMS AGAINST FINANCIAL INSTITUTIONS IN DEFAULT.—

"(1) IN GENERAL.—Notwithstanding any other State or Federal law, and regardless of the method which the Corporation determines to utilize with respect to an insured financial institution in default or in danger of default (other than a nonliquidating conservatorship), including but not limited to transactions authorized under subsection (i) and under section 13(c)(2)(A), this subsection shall govern the rights of the creditors (other than insured depositors) of such financial institution.

"(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the estate of an insured financial institution in default shall equal the amount such claimant would have received from the estate of the financial institution if the Corporation had liquidated such estate without exercising its authority under subsection (i) of this section or section 13. In addition, such maximum liability shall include the amount the Corporation as receiver actually realizes as a premium reflecting the value of the institution as a going concern. In the case of an insured financial institution which the Corporation elects to operate, the point in time for determining what such claimant will receive from the estate of the financial institution had the Corporation liquidated such estate shall be the date the receiver ceases operating the financial institution, and begins to wind up the affairs of the financial institution, and for purposes of this paragraph only, the Corporation shall not be liable to any such claimant should the estate of the financial institution be diminished from the time the Corporation begins operating the financial institution to the time the Corporation ceases operating the financial institution and begins to wind up the affairs of the financial institution, absent a finding of bad faith on the part of the Corporation.

"(3) ADDITIONAL PAYMENTS AUTHORIZED.—

"(A) IN GENERAL.—The Corporation may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. The Corporation shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category or claimants.

"(B) SOURCE OF FUNDS.—If the financial institution in default is a Bank Insurance Fund member, the Corporation may only make such payments out of funds held in the Bank Insurance Fund. If the financial institution in default is a Savings Association Insurance Fund member, the

Corporation may only make such payments out of funds held in the Savings Association Insurance Fund.

"(C) Manner of payment.—The Corporation may make the payments or credit the amounts specified in subparagraphs (A) and (B) directly to the claimants or may make such payments or credit such amounts to an open insured financial institution to induce the open insured financial institution to accept liability for such claims.

"(l) Rulemaking and Claims Determination Authorized.—

"(1) In general.—The Corporation shall have the exclusive power to make rules and regulations for the conduct of conservatorships and receiverships where it is so appointed and the Corporation may, by regulation or order, provide for the exercise of functions by members or stockholders, directors, or officers of a financial institution during conservatorship or receivership. The Corporation shall also have the power to determine claims in accordance with rules and regulations it shall prescribe and subject to judicial review as herein provided. No court shall have jurisdiction over any claim or action seeking payment from, or a determination of rights with respect to, the assets of any financial institution for which the Corporation has been appointed receiver or conservator, including assets which the Corporation may acquire from itself as such receiver or conservator, or with respect to any act or omission of the institution or the Corporation as receiver or conservator except as set out in paragraphs (2) and (3) of this subsection.

"(2) Rules and regulations.—The authority to determine claims shall only be exercised after the Corporation has established rules or regulations governing the processing of claims, the accounting of estate funds, and the distributing of residual funds to shareholders. The rules and regulations if promulgated shall provide that—

"(A) the receiver shall make an initial determination of acceptance or rejection within a specified reasonable time period;

"(B) the claimant may reject or contest the receivers determination in whole or in part within a reasonable specified time period;

"(C) if the claimant rejects or contests the determination of the receiver, then the matter shall be referred to a certified administrative law judge;

"(D) the administrative law judge shall determine if the dispute involves a material question of fact. If the issues presented raise no material question of fact or if the claimant and the Corporation otherwise agrees, the judge may conduct the proceedings entirely by pleading and a hearing shall be unnecessary;

"(E) if a dispute as to a material fact is present and the material fact issue would preclude a summary judgment disposition order under the Federal Rules of Civil Procedure, then the judge shall conduct a full evidentiary hearing under rules of procedure and evidence promulgated by the Corporation for that purpose;

"(F) the administrative law judge's decision in any case shall be appealable only to the Circuit Court of Appeals for the District of Columbia or the Circuit in which the failed institution was located. Such an appeal must be filed within 60 days of the judge's final decision;

"(G) as to all legal issues the standard of review shall be the same as any review of a district court decision;

"(H) as to factual issues, the Court of Appeals shall uphold the findings of the administrative law judge provided there is substantial evidence to support the findings; and

"(I) the petitions for review of decisions under this subsection shall be upon the record of the pleadings before the administrative law judge.

"(3) ACTIONS IN THE ABSENCE OF RULES AND REGULATIONS.—In the absence of rules and regulations established by the Corporation for the resolution of claims against the estate of the financial institution, any action or proceeding against a financial institution for which the Corporation has been appointed receiver, or against the Corporation as receiver of such financial institution, shall be brought in the district or territorial court of the United States held within the district in which that financial institution's principal place of business is located, or, in the event any State, county, or municipal court has jurisdiction over such an action or proceeding, in such court in the county or city in which the financial institution's principal place of business is located.

"(4) AGREEMENTS AGAINST INTEREST.—No agreement which does not meet the requirements set forth in section 13(e) shall form the basis of, or substantially comprise, a claim against the Corporation or the estate of the financial institution in default.

"(5) NO EFFECT ON FINAL ADJUDICATION.—The Corporation may not by regulation or rule disturb the final adjudication of a court rendered prior to the appointment of the Corporation as receiver or conservator. In the event of such a judgment, the receiver shall have all the rights and remedies available to the institution prior to failure but shall not be required to post any bond in order to pursue such remedies.

"(6) ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the Corporation as receiver.

"(m) JUDICIAL REVIEW.—Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or receiver.

"(n) LIABILITY.—A director or officer of an insured financial institution may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

"(A) acting as receiver or conservator of that insured financial institution, "(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator or

"(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured financial institution or its affiliate in connection with assistance provided under section 13, for gross negligence or intentional tortious conduct, as those terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right, if any, of the Corporation that may have existed immediately prior to the enactment of the FIRRE Act.

"(o) PROCEDURES APPLICABLE TO CERTAIN CLAIMS.—

"(1) IN GENERAL.—In any proceeding related to any claim acquired under section 11 or 13 of this Act against an insured financial institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured financial institution, any suit, claim, or cause of action brought by the Corporation shall have priority over any such suit, claim, or cause of action asserted by depositors, creditors, or shareholders of the insured financial institution, except for claims of Federal agencies as provided in section 6321 of the Internal Revenue Code of 1986 and section 3713 of title 31, United States Code. This priority shall apply to both the prosecution of any suit, claim, or cause of action, and to the execution of any subsequent judgments resulting from such suit.

"(2) DEFENSES.—

"(A) Alleged acts, errors, or omissions of the Corporation, or any other appropriate Federal banking agency, shall in no way provide a defense to nor in any way diminish, directly or indirectly, any such suit, claim, or cause of action brought under this section, whether such acts, errors, or omissions are raised in a separate lawsuit, counterclaim, affirmative defense, setoff, recoupment, or in any other manner. Evidence pertaining to such acts, errors, or omissions shall not be admissible for any purpose in any action brought by the Corporation under this section.

"(B) Alleged acts, errors, or omissions of the Corporation in connection with the liquidation, sale, disposal or other handling of any assets or claims acquired pursuant to section 11 or 13 of this Act shall in no way provide a defense to, nor in any way diminish, directly or indirectly, any suit, claim, or cause of action brought under this section, whether such acts, errors, or omissions are raised in a separate lawsuit, counterclaim, affirmative defense, setoff, recoupment, or in any other manner. Evidence pertaining to such alleged acts, errors, or omissions shall not be admissible for any purpose in any action brought by the Corporation under this section.

"(3) DEFALCATION.—A finding by a Federal bankruptcy or district court that a director or an officer of an insured financial institution has breached any of his or her fiduciary duties to that institution shall constitute a defalcation while acting in a fiduciary capacity within the meaning of section 523(a)(4) of title 11, United States Code. The liability arising from such breach shall constitute a debt not dischargeable in bankruptcy.

"(4) DAMAGES.—Recoverable damages determined to result from the improvident or otherwise improper use or investment of an insured financial institution assets shall include, but not be limited to, principal losses plus appropriate interest.

"(p) COMPUTATION OF LIMITATIONS.—Notwithstanding any other provision of law, for the purpose of computing whether the applicable limitations period has expired prior to the Corporation's acquisition of the claim, in addition to the time excluded under any other applicable tolling rules, there shall be excluded—

"(1) as to any action against a director or officer, all periods during which any culpable director or officer continues in such capacity;

"(2) as to any action against an accountant, attorney, appraiser, or other person providing services to the insured financial institution, all periods during which such party continues to provide services to the insured institution.

If a claim is not already time-barred at the time the Corporation acquires it, the limitations periods set forth in sections 2415 and 2416 of title 28, United States Code, shall start anew at the time the Corporation acquires the claim.

"(q) TIME FOR FILING NOTICE OF APPEAL.—The notice of any appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against an insured institution's officers and directors, attorneys, accountants, or other agents shall be filed within 10 days of the entry of that order. Hearing of the appeal shall be within 30 days of the filing of the notice. The appeal will be decided within 90 days of the filing of the notice.

"(r) SCHEDULING.—Consistent with section 1647 of title 28, United States Code, the courts of the United States shall expedite the consideration of any case brought by the Corporation against an insured institution's officers and directors, attorneys, accountants, or other agents. As far as practicable, the courts will give such cases priority on their dockets.

"(s) JUDICIAL DISCRETION.—Any judge may modify the schedule and limitations of subsections (q) and (r) as applied to a specific case, based on a specific finding that the ends of justice served by making such a modification outweigh the best interest of the public in having the case resolved expeditiously.".

SEC. 215. FSLIC RESOLUTION FUND.

The Federal Deposit Insurance Act is amended by inserting after section 11 the following:

"SEC. 11A. FSLIC RESOLUTION FUND.

"(a) ESTABLISHED.—

"(1) IN GENERAL.—There is established a separate fund to be designated as the FSLIC Resolution Fund which shall be managed by the Corporation and separately maintained and not commingled.

"(2) TRANSFER OF FSLIC ASSETS AND LIABILITIES.—On the date of the dissolution of the Federal Savings and Loan Insurance Corporation in accordance with section 401 of the FIRRE Act, all reserves and all other assets of any kind, and debts, obligations, contracts and other liabilities of the Federal Savings and Loan Insurance Corporation, matured or unmatured, accrued, absolute, contingent, or otherwise shall be transferred in their entirety to the FSLIC Resolution Fund. Such liabilities transferred to the FSLIC Resolution Fund shall not include liabilities specifically transferred pursuant to section 21A(o) of the Federal Home Loan Bank Act.

"(3) SEPARATE HOLDING.—Such reserves, assets, debts, obligations, contracts, or other liabilities as are so transferred shall be exclusive assets and liabilities of the FSLIC Resolution Fund and not of the Corporation and shall not be consolidated with the assets and liabilities of the Bank Insurance Fund, the Savings Association Insurance Fund, or the Corporation for accounting or reporting or any other purpose.

"(b) SOURCE OF FUNDS.—The FSLIC Resolution Fund shall be funded from the following sources in the listed priority to the extent funds are needed:

"(1) income earned on assets of the FSLIC Resolution Fund;

"(2) the proceeds of the resolution of insolvent savings associations which were resolved by action of the Federal Savings and Loan Insurance Corporation prior to January 1, 1989, to the extent such funds are not required by the Resolution Funding Corporation pursuant to section 21B of the Federal Home Loan Bank Act or the Financing Corporation pursuant to section 21 of such Act;

"(3) proceeds from borrowings by the Financing Corporation pursuant to section 21 of the Federal Home Loan Bank Act; and

"(4) all amounts assessed Savings Association Insurance Fund members by the Corporation pursuant to section 7 from the date of enactment of the FIRRE Act, and not required by the Financing Corporation pursuant to section 21 of the Federal Home Loan Bank Act, or for the Resolution Funding Corporation pursuant to section 21B of the Federal Home Loan Bank Act, which shall be covered into the FSLIC Resolution Fund until December 31, 1991. Miscellaneous income from assets of the Federal Savings and Loan Insurance Corporation that were transferred to the FSLIC Resolution Fund in accordance with this section shall be transferred to the Savings Association Insurance Fund to the extent needed for administrative expenses.

"(c) TREASURY BACKUP.—In the event that all the above funds are insufficient to satisfy the liabilities of the FSLIC Resolution Fund, the Secretary of the Treasury shall, subject to the availability of appropriations, provide such excess funds determined by the Federal Deposit Insurance Corporation and the Secretary to be necessary for FSLIC Resolution Fund purposes. There are authorized to be appropriated to the Secretary of the Treasury, without fiscal year limitation, such sums as may be necessary to carry out the provisions of this section.

"(d) FDIC POWERS.—In order to manage the assets and liabilities transferred to the FSLIC Resolution Fund, the Corporation may exercise the authorities granted under this Act, and those authorities exercised by the Federal Savings and Loan Insurance Corporation immediately prior to the enactment of the FIRRE Act, including but not limited to, authority to collect claims and indebtedness, to enforce liabilities and obligations, whether contingent or otherwise, to defend lawsuits and to exercise the incidental powers and authorities currently provided to the Federal Savings and Loan Insurance Corporation.

"(e) LEGAL PROCEEDINGS.—Notwithstanding any other provision of law, any judgment resulting from civil action, suit, or proceeding to which the Federal Savings and Loan Insurance Corporation was a party prior to its dissolution hereunder, or which is initiated against the Corporation (or its assets) with respect to Federal Savings and Loan Insurance Corporation actions or inactions or with respect to FSLIC Resolution Fund activities, shall be limited to the assets of the FSLIC Resolution Fund.

"(f) DISSOLUTION.—The FSLIC Resolution Fund shall be dissolved upon satisfaction of all debts and liabilities and sale of all assets acquired in case resolutions and otherwise. Upon dissolution any remaining funds shall be covered into the Treasury. Any administrative facilities and supplies, including offices and office supplies, shall be transferred to the Corporation for use by and to be held as assets of the Savings Association Insurance Fund.

"(g) ANNUAL REPORT ON FSLIC RESOLUTION FUND.—

"(1) IN GENERAL.—

"(A) REPORT REQUIRED.—The Corporation shall annually submit a full report on the operations, activities, receipts, and expenditures of the FSLIC Resolution Fund for the preceding 12-month period. The report shall include—

"(i) audited statements of financial position, income and expense, and cash flow, an analysis of surplus or deficit, and

"(ii) such additional statements and information as necessary to make known the financial condition and operations of the Fund in accordance with generally accepted accounting principles.

"(B) SUBMISSION.—The report, including the results of the audit conducted pursuant to paragraph (2), shall be submitted to the President of the Senate and the Speaker of the House of Representatives, who shall cause the same to be printed for the information of Congress, and to the President as soon as practicable after the first day of January of each year but not later than 6 months after the close of the 12-month period covered by the report.

"(2) AUDIT.—

"(A) AUDIT REQUIRED.—The Comptroller General shall audit annually the financial statements of the FSLIC Resolution Fund in accordance with generally accepted government auditing standards unless the Comptroller General notifies the Chairman of the Federal Deposit Insurance Corporation no later than 180 days before the close of a fiscal year that the Comptroller General will not perform such audits for that fiscal year. In the event of such notification, Federal Deposit Insurance Corporation shall contract with an independent certified public accountant to perform the annual audit of the financial statements of the FSLIC Resolution Fund in accordance with generally accepted government auditing standards.

"(B) ACCESS TO BOOKS AND RECORDS.—All books, records, accounts, reports, files, and property belonging to or used by the FSLIC Resolution Fund, or by an independent certified public accountant retained to audit the Fund's financial statements, shall be made available to the Comptroller General.".

SEC. 216. SECONDARY RESERVE.

Section 11A of the Federal Deposit Insurance Act is amended by adding at the end the following:

"(f) SECONDARY RESERVE.—

"(1) IN GENERAL.—

"(A) CREDIT.—The Corporation shall credit to the secondary reserve, as of the close of each calendar year a return on the outstanding balances of the secondary reserve, during such calendar year, as determined by the Corporation, at a rate equal to the average annual rate of return to the Corporation during the year ending at the close of November 30 of such calendar year, as determined by the Corporation, on the investments in the FSLIC Resolution Fund. Except as provided in paragraph (2), the secondary reserve shall be available to the Corporation only for losses of the Corporation and shall be so available only to such extent the FSLIC Resolution Fund is insufficient for such losses. No right, title, or interest of any insured financial institution in or with respect to its pro rata share of the secondary reserve shall be assignable or transferable whether by operation of law or otherwise, except to such extent as the Corporation may provide for transfer of such pro rata share in cases of merger or consolidation, transfer of bulk assets or assumption of liabilities, and similar transactions, as defined by the Corporation for purposes of this sentence.

"(B) SECONDARY RESERVE OFFSETS AGAINST ASSESSMENTS.—

"(i) OFFSETS IN ASSESSMENT YEARS BEGINNING BEFORE 1993.—Subject to the maximum amount limitation contained in clause (ii) and notwithstanding any other provision of law, an insured financial institution may offset such institution's pro rata share of the statutorily prescribed amount against any assessment assessed against such insured institution under section 7 for any premium year beginning after 1987 and before 1993.

"(ii) ANNUAL MAXIMUM AMOUNT LIMITATION.—The amount of any offset allowed for any insured financial institution under clause (i) for any premium year referred to in clause (i) shall not exceed an amount which is equal to 20 percent of such institution's pro rata share of the statutorily prescribed amount (as computed for the calendar year in which such premium year begins).

"(iii) OFFSETS IN ASSESSMENT YEARS BEGINNING AFTER 1992.—Notwithstanding any other provision of law, an insured institution may offset such institution's pro rata share of the statutorily prescribed amount against any assessment assessed against such insured institution for any premium year beginning after 1992.

"(iv) STATUTORILY PRESCRIBED AMOUNT DEFINED.—For purposes of this paragraph, the term 'statutorily prescribed amount' means—

"(I) with respect to calendar year 1988, the sum of $823,705,000; and

"(II) with respect to any calendar year beginning after 1988, the sum contained in subclause (I) minus the aggregate amount of offsets made by all insured financial institutions before the beginning of the calendar year for which such computation is being made.

"(v) INSURED FINANCIAL INSTITUTION'S PRO RATA AMOUNT.—For purposes of this paragraph, an insured financial institution's pro rata share of the statutorily prescribed amount is the percentage which is equal to such institution's pro rata share of the secondary reserve as determined on the day before the date (prior to the enactment of the FIRRE Act) on which the Federal Savings and Loan Insurance Corporation ceased to recognize the secondary reserve.

"(vi) PREMIUM YEAR DEFINED.—For purposes of this paragraph, the term 'premium year' means, with respect to any insured financial institution, the calendar year for which an assessment is assessed under section 7(b)(2).

"(2) PRO RATA DISTRIBUTION ON TERMINATION OF INSURED STATUS.—

"(A) IN GENERAL.—If (i) the status of an insured financial institution as an insured financial institution is terminated pursuant to any provision of section 8 or the insurance of accounts of an insured institution is otherwise terminated, (ii) a conservator, receiver, or other legal custodian is appointed for an insured institution under the circumstances and for the purpose of liquidation or winding up the affairs of the insured financial institution, or (iii) the Corporation makes a determination that for the purposes of this subsection an insured institution otherwise has gone into liquidation, the Corporation shall pay in cash to such institution its pro rata share of the secondary reserve, in accordance with such terms and conditions as the Corporation may prescribe, or, at the option of the Corporation, the Corporation may apply the whole or any part of the amount which would otherwise be paid in cash toward the payment of any indebtedness or obligation, whether matured or not, of such institution to the Corporation, then existing or arising before such payment in cash. Such payment or such application need not be made to the extent that the provisions of the exception in the last sentence of paragraph (1)(A) are applicable.

"(B) EXCEPTION.—In the case of an institution which—

"(i) ceases to be an insured institution; and

"(ii) is required to pay an assessment to the Financing Corporation under section 21(f)(4) of the Federal Home Loan Bank Act with respect to the termination of such insured status, subparagraph (A) and the last sentence of paragraph (1)(A) shall not apply with respect to such institution.

"(3) SECONDARY RESERVE.—For purposes of this subsection, the term 'secondary reserve' means the secondary reserve described in subsection (a) of section 404 of the National Housing Act on the day prior to the date of enactment of the FIRRE Act.".

SEC. 217. AMENDMENTS TO SECTION 12.

Section 12 of the Federal Deposit Insurance Act (12 U.S.C. 1822) is amended—

(1) by striking "closed bank" each place it appears and inserting "financial institution in default";

(2) by striking subsection (a) and inserting the following:

"(a) BOND NOT REQUIRED; AGENTS; FEE.—The Corporation as receiver of an insured financial institution or branch of a foreign bank shall not be required to furnish bond and shall have the right to appoint an agent or agents to assist it in its duties as such receiver, and all fees, compensation, and expenses of liquidation and administration thereof shall be fixed by the Corporation, and may be paid by it out of funds coming into its possession as such receiver."; and

(3) in subsection (d)—

(A) by striking "as a stockholder of the financial institution in default, or of any liability of such depositor"; and

(B) by striking "such bank" and inserting "such financial institution".

SEC. 218. AMENDMENTS TO SECTION 13.

Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) INVESTMENT OF CORPORATION FUNDS.—

"(1) AUTHORITY.—Funds held in the Bank Insurance Fund, the Savings Association Insurance Fund, or the FSLIC Resolution Fund, that are not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

"(2) LIMITATION.—The Corporation shall not sell or purchase any obligations described in paragraph (1) for its own account, at any one time aggregating in excess of $100,000, without the approval of the Secretary of the Treasury. The Secretary may approve a transaction or class of transactions subject to the provisions of this paragraph under such conditions as the Secretary may determine.";

(2) in subsection (b)—

(A) by striking "banking and checking" and "banking or checking" wherever they occur and inserting the word "depository";

(B) by striking "bank" (except "Federal Reserve bank") wherever it appears and inserting "financial institution";

(3) in subsection (c)—

(A) by striking "closing" or "closed" wherever they appear and the inserting "default" or "in default".

(B) by striking "an" before "closed insured bank" wherever it appears and inserting "a";

(C) by striking "in default insured financial institution" wherever it appears and inserting "insured financial institution in default";

(D) in paragraph (2)(A)—

(i) by striking "such insured institution" and "an insured financial institution" and inserting "such other insured financial institution" and "another insured financial institution", respectively;

"(ii) by inserting "any or all of the" after "the sale of"; and

"(iii) by striking "and the assumption" and inserting "or the assumption of any or all";

(E) by adding at the end of paragraph (2) the following:

"(C) Any action to which the Corporation is or becomes a party by virtue of its acquisition of any asset or exercise of any other authority set forth in this section or section 11 shall be stayed for a period of 45 days at the request of the Corporation.";

(F) in paragraph (3), by striking "section 13(f) of this Act" and inserting "subsection (f) or (k) thereof";

(G) in paragraph (4)—

(i) by striking "banking" and inserting "financial"; and

(ii) by inserting at the end of subparagraph (A) the following: "In calculating the cost of assistance, the Corporation shall include (i) the immediate and long-term obligations of the Corporation with respect to such assistance, including contingent liabilities, and (ii) the Federal tax revenues foregone by the Government, to the extent reasonably ascertainable."; and

(H) by striking paragraph (8);

(I) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively;

(J) by inserting after paragraph (5) the following:

"(6) The transfer of any assets or liabilities associated with any trust business of an insured financial institution in default under subparagraph (2)(A) shall be effective without any State or Federal approval, assignment, or consent with respect thereto."; and

(K) by adding at the end the following:

"(9) Payments made under this subsection shall be made—

"(A) from the Bank Insurance Fund in the case of payments to a member of such Fund; or

"(B) from the Savings Association Insurance Fund or from funds made available by the Resolution Trust Corporation in the case of Savings Association Insurance Fund members.";

(4) by striking subsections (d) and (e) and inserting the following:

"(d) SALE OF ASSETS TO CORPORATION.—Conservators, receivers, or liquidators of insured financial institutions in default shall be entitled to offer the assets of such financial institutions for sale to the Corporation or as security for loans from the Corporation. The proceeds of every such sale or loan shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such financial institutions. The Corporation, in its discretion, may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured financial institution which is now or may hereafter be in default.

"(e) AGREEMENTS AGAINST INTERESTS OF CORPORATION.—No agreement which tends to diminish or defeat the right, title or interest of the Corporation in any asset acquired by it under this section or section 11, either as security for a loan or by purchase or as receiver of any insured financial institution, shall be valid against the Corporation unless such agreement—

"(1) shall be in writing,

"(2) shall have been executed by the financial institution and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the financial institution, or if the financial institution is the borrower under such agreement, the agreement was executed prior to or contemporaneously with such borrowing,

"(3) shall have been approved by the board of directors of the financial institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

"(4) shall have been, continuously, from the time of its execution, an official record of the financial institution.";

(5) in subsection (f)—

(A) by striking "closed" and "closing" wherever they occur and inserting "in default" or "default", respectively, except that whenever "bank" immediately follows "closed", the phrase "closed bank" shall be stricken and the phrase "bank in default" shall be inserted;

(B) in paragraph (2)(B)(iii) by striking "a unanimous vote" and inserting "a vote of 75 percent of";

(C) by striking "depository" wherever it appears and inserting "financial";

(D) by striking "the constitution of any State,";

(E) in paragraph (6)(A), by inserting "the offeror which made the initial lowest acceptable offer and" after "the Corporation shall permit";

(F) by adding at the end of paragraph (7) the following:

"(C) if in the opinion of the Corporation the acquisition threatens the safety and soundness of the acquirer or does not result in the future viability of the resulting financial institution.";

(G) in paragraph (8), by striking subparagraphs (A), (B), and (D) and redesignating paragraphs (C), (E), (F), and (G) as subparagraphs (A), (B), (C), and (D), respectively; and

(H) in paragraph (9)—

(i) in the paragraph heading by striking "nonbank" and inserting "certain";

(ii) in paragraph (9)(A), by inserting ", other than a subsidiary that is an insured financial institution," after "subsidiary" and by striking "which is not an insured bank"; and

(iii) in paragraph (9)(B) by inserting "or an affiliate of an insured financial institution" after "intermediate holding company";

(6) in subsection (h), by striking "a closed insured financial institution", "closing", and "insurance fund" and inserting "an insured financial institution in default", "default", and "Bank Insurance Fund", respectively;

(7) in subsection (i)—

(A) by inserting "financial" before "institution" wherever it appears;

(B) in paragraph (1)(C)—

(i) by striking "corporation" and inserting "Corporation";

(ii) by striking "chartered bank" and inserting "chartered financial institution";

(iii) by inserting ", a savings association," after "State member bank"; and

(iv) by inserting "or the Chairman of the Office of Savings Associations" after "Federal Reserve System";

(C) in paragraph (2), by striking "or insured or guaranteed under State law"; and

(D) by striking paragraphs (10) and (12); and

(8) by adding at the end thereof the following:

"(k)(1)(A)(i) Notwithstanding any provision of State law the Corporation, upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, may authorize, in its discretion and if it determines such authorization would lessen the risk to the Corporation, a savings association that is eligible for assistance pursuant to subsection (c) to merge or consolidate with, or to transfer its assets and liabilities to, any other savings association or any insured bank, may authorize any other savings association to acquire control of such savings association, or may authorize any company to acquire control of such savings association or to acquire the assets or assume the liabilities thereof. In any authorization under this paragraph the Corporation shall determine that the authorization does not present a substantial risk to the safety or soundness of the savings association to be acquired or to the acquiring entity or entities.

"(ii) Mergers, consolidations, transfers, and acquisitions under this subsection shall be on such terms as the Corporation shall provide.

"(iii) Where otherwise required by law, transactions under this subsection must be approved by the appropriate Federal banking agency of every party thereto.

"(iv) A Federal savings association that acquires another savings association pursuant to clause (i) may, with the concurrence of the Chairman of the Office of Savings Associations, hold that savings association as a subsidiary notwithstanding the percentage limitations of section 5(c)(4)(B) of the Home Owners' Loan Act of 1933.

"(v) Dual service by a management official that would otherwise be prohibited under the Depository Institution Management Interlocks Act may, with the approval of the Corporation, continue for up to 10 years.

"(vi) Nothing in this subsection overrides or supersedes State laws restricting or limiting the activities of a savings association on behalf of any other entity.

"(B)(i) Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State official having jurisdiction of the acquired institution.

"(ii) The official shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

"(iii) If the official objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent or more of the voting members of the Board of Directors. The Corporation shall provide to the official, as soon as practicable, a written certification of its determination.

"(2) In considering authorizations under this subsection, the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the savings association.

"(3)(A) If, after receiving offers, the offer presenting the lowest expense to the Corporation, that is in a form and with conditions acceptable to the Corporation (hereinafter referred to as the 'lowest acceptable offer'), is from an institution that is not an existing in-State savings association or an in-State savings and loan holding company, the Corporation shall permit the offeror which made the lowest acceptable offer and each offeror who made an offer the estimated cost of which to the Corporation was within 15 percent or $15,000,000, whichever is less, of the initial lowest acceptable offer to submit a new offer.

"(B) In considering authorizations under this subsection, the Corporation shall give consideration to the need to minimize the cost of financial assistance and to the maintenance of specialized financial institutions. The Corporation shall authorize transactions under this subsection considering the following priorities:

"(i) First, between financial institutions of the same type within the same State;

"(ii) Second, between financial institutions of the same type in different States;

"(iii) Third, between financial institutions of different types in the same State; and "(iv) Fourth, between financial institutions of different types in different States.

"(C) In the case of a minority-controlled financial institution, the Corporation shall seek an offer from other minority-controlled financial institutions before proceeding with the sequence set forth in subparagraph (B).

"(D) In considering offers from different States, the Corporation shall give a priority to offers from adjoining States.

"(E) In determining the cost of offers and reoffers under this subsection, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers and reoffers.

"(4) For purposes of this subsection—

"(A) the term 'of the same type' means financial institutions that are 'savings associations' as defined in section 10(a) of the Home Owners' Loan Act of 1933 or holding companies thereof; and

"(B) a financial institution is 'within the same State' where the financial institution is an existing insured financial institution currently operating in the State in which the institution to be acquired has its home office or a company that is operating an insured financial institution subsidiary in the State in which the institution to be acquired has its home office.

"(5)(A) Where a merger, consolidation, transfer, or acquisition under this subsection involves a savings association eligible for assistance and a bank or bank holding company, a savings association may retain and operate any existing branch or branches or any other existing facilities. If the savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association located in the same State that is not affiliated with a bank holding company.

"(B)(i) Notwithstanding the foregoing, if such a savings association does not have its home office in the State of the bank holding company bank subsidiary, and if such association does not qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986, or does not meet the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify, then such savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the State in which the Savings Association Insurance Fund member is located.

"(ii) The Corporation, for good cause shown, may allow a savings association up to 2 years to comply with the requirements of clause (i).".

SEC. 219. BORROWING AUTHORITY.

Section 14 of the Federal Deposit Insurance Act (12 U.S.C. 1824) is amended—

(1) by striking "and directed" and by striking "$3,000,000,000 outstanding at any one time" and inserting "$5,000,000,000 outstanding at any one time, subject to the approval of the Secretary of the Treasury and to approval in an appropriation Act"; and

(2) by adding at the end the following: "The Corporation may employ such funds for purposes of the Bank Insurance Fund or the Savings Association Insurance Fund and the borrowing shall become a liability of each such fund to the extent funds are employed therefor."; and

(3) by striking "the current average rate on outstanding marketable and nonmarketable obligations of the United States as of the last day of the month preceding the making of such loan" and inserting in lieu thereof the following: "an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities".

SEC. 220. LIMITATION ON BORROWINGS.

Section 15 of the Federal Deposit Insurance Act (12 U.S.C. 1825) is amended as follows:

(1) by inserting "(a)" after "SEC. 15."

(2) by inserting before the period at the end of the last sentence of subsection (a) the following: "and such State, territorial, county, municipal or local taxation shall be the only type of State, territorial, county, municipal, or local tax to which the Corporation for itself or as receiver of an insured financial institution shall be subjected. Further, the failure of an insured financial institution to pay or remit any State, territorial, county, municipal, or other local tax shall not subject the Corporation as receiver or conservator of that financial institution to any penalty, forfeiture, or limitation with respect to the enforceability of any right, title, or interest the Corporation as receiver or conservator may have and such failure to pay the tax shall only result in a claim for such tax against the estate of the financial institution"; and

(3) by adding at the end the following:

"(b)(1) The Corporation shall estimate the cost of all notes or similar obligations issued by it, and all guarantees or similar obligations incurred by it, prior to the creation thereof, and shall reflect such cost in its financial statements, and make such adjustments as are appropriate thereto no less than quarterly.

"(2) The Corporation shall not issue any note or similar obligation, and shall not incur any liability under a guarantee or similar obligation, with respect to either the Bank Insurance Fund or the Savings Association Insurance Fund if the estimated cost thereof would reduce the net worth of the respective Insurance Fund to less than 15 percent of assets.

"(3) With the prior approval of the Secretary of the Treasury, the Corporation may issue or incur up to $5,000,000,000 in the aggregate of additional liabilities in excess of the limitations of (2) above. Any such additional liabilities shall reduce, on a dollar basis, the amount which the Corporation may borrow from the Treasury under section 14 of this Act.

"(4) For the purpose of subsection (b), the net worth of an Insurance Fund shall be calculated based upon the most recent audit of such Fund by the General Accounting Office, as reduced by the adjustments required in paragraph (1).".

"(c) Full Faith and Credit.—The full faith and credit of the United States is pledged to the payment of all notes, debentures, bonds, and other similar obligations, including guarantees and similar liabilities, of the Bank Insurance Fund and the Savings Association Insurance Fund, with respect to both principal and interest.".

SEC. 221. REPORTS.

(a) In General.—Section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) Annual Reports on BIF, SAIF, and the FSLIC Resolution Fund.—

"(1) In general.—The Corporation shall annually submit a full report of its operations, activities, budget, receipts, and expenditures for the preceding 12-month period. The report shall include, with respect to the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund, an analysis by the Corporation of—

"(A) the purpose, effect, and estimated cost of each resolution action taken for an insured institution during the preceding year;

"(B) the extent to which the actual costs of assistance provided to, or for the benefit of, an insured institution during the preceding year exceeded the estimate costs of such assistance reported in a previous year under paragraph (A);

"(C) a current estimate of the resources needed for the Bank Insurance Fund, the Savings Association Insurance Fund, or the FSLIC Resolution Fund to achieve the purposes of this Act; and

"(D) any findings, conclusions, and recommendations for legislative and administrative actions considered appropriate to future resolution activities by the Corporation.

"(2) Manner of submission.—Such report shall be submitted to the President of the Senate and the Speaker of the House of Representatives, who shall cause the same to be printed for the information of Congress, and the President as soon as practicable after the first day of January each year."

(2) by redesignating subsections (b), (c), and (d) as (c), (d), and (e), respectively; and

(3) by adding a new subsection (b) to read as follows:

"(b) Budget Planning.—As soon as practicable, prior to the beginning of each fiscal quarter, the Corporation shall submit a report to the Secretary of the Treasury and the Director of the Office of Management and Budget with respect to the Corporation's financial operating plans and forecasts (including estimates of actual and future spending, and estimates of actual and future non-cash obligations) taking into account the Corporation's financial commitments, guarantees and other contingent liabilities. Nothing herein implies any obligation on the part of the Corporation to obtain the consent or approval of the Secretary or the Director of the plans and forecasts provided pursuant hereto.".

(b) SPECIFIC REPORTS.—

(1) RISK-BASED ASSESSMENTS.—The Federal Deposit Insurance Corporation shall study the establishment of premium assessment categories related to types of risk to the insurance funds and shall report its recommendations to the Congress not later than January 1, 1991. If the Corporation should recommend the establishment of such a risk-based assessment plan, it shall also provide a timetable and plan for implementation.

(2) STUDY OF DEPOSIT INSURANCE PASS-THROUGH.—Not later than 6 months after the date of enactment of this Act, the Federal Deposit Insurance Corporation shall transmit to the Congress a report containing its findings and recommendations relating to the pass-through of deposit insurance either to individual investors in unit investment trust funds or to individual participants in pension or to profit sharing plans qualified under section 401 of the Internal Revenue Code of 1986. Such report shall also contain the Corporation's assessment of the potential effects of broadening deposit insurance coverage on the operation of capital markets.

(3) REPORT ON DIRECTORS AND OFFICERS LIABILITY INSURANCE.—

(A) STUDY.—The Federal Deposit Insurance Corporation shall, together with the Department of the Treasury and the Department of Justice, conduct a comprehensive study of directors and officers liability insurance and financial institution bonds, and the availability of such insurance for directors and officers of insured financial institutions. The study shall include—

(i) consideration of State laws limiting liability for directors and officers;

(ii) the effect of contractual provisions limiting insurance coverage when an institution is placed in receivership or conservatorship;

(iii) provisions limiting coverage when a claim is made by the Federal Deposit Insurance Corporation; and

(iv) provisions limiting claims made by one insured against another insured.

In addition, the study shall consider the need for such insurance or bonds and the effect any change in any of the above noted conditions or terms may have on the future availability of such insurance, and the ability of financial institutions to attract qualified officers and directors.

(B) REPORT.—Not later than 6 months after the date of enactment of the FIRRE Act, the Federal Deposit Insurance Corporation, together with the Department of the Treasury and the Department of Justice, shall report its findings from the study under subparagraph (A) to the Congress, together with legislative recommendations.

SEC. 222. REGULATIONS GOVERNING INSURED FINANCIAL INSTITUTIONS.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended—

(1) by striking "(a)" and the first two sentences of subsection (a) and inserting the following:

"(a) INSURANCE LOGO.—

"(1) INSURED SAVINGS ASSOCIATIONS.—Each insured savings association shall display at each place of business maintained by such association a sign containing only the following items:

"(A) a statement that insured deposits are 'backed by the full faith and credit of the United States Government';

"(B) a statement that each account is 'federally insured to $100,000'; and

"(C) the symbol of the American eagle.

The sign shall not contain any reference to a Government agency and shall accord each item substantially equal prominence.

"(2) INSURED BANKS.—Each insured bank shall display at each place of business maintained by such bank a sign that conforms to one or the other of the following:

"(A) the sign required to be displayed by insured banks under regulations prescribed by the Corporation in effect on January 1, 1989, or

"(B) the sign prescribed under paragraph (1).

"(3) REGULATIONS.—The Corporation shall have the authority to prescribe regulations to carry out the purposes of this subsection, including regulations governing the manner of display or use of such signs, except that the size of the sign prescribed under paragraph (1) shall be the same as that prescribed under paragraph (2)(A).";

(2) in subsection (c)—

(A) in paragraph (2), by striking subparagraph (C) and inserting the following:

"(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank (except a District bank or a savings bank supervised by the Chairman of the Office of Savings Associations); and

"(D) the Chairman of the Office of Savings Associations if the acquiring, assuming, or resulting institution is to be a savings association.";

(B) by striking paragraph (12);

(C) in paragraphs (3), (4), (6), (7), and (9), by inserting after the word "bank" or "banks" each time it appears, the words "or savings association" or "or savings associations", respectively; and

(D) in paragraph (3), by striking "failure" and inserting "default";

(3) in subsection (i)—

(A) in paragraph (1), by striking "nonmember bank (except a District bank)" and inserting "financial institution (except a member bank, a District bank, or savings bank supervised by the Chairman of the Office of Savings Associations)";

(B) in paragraph (2)—

(i) in subparagraph (C), by inserting with in the parenthetical "or a savings bank to be supervised by the

Chairman of the Office of Savings Associations" after "except a District bank"; and

(ii) by inserting before the period the following: "; (D) the Chairman of the Office of Savings Associations if the resulting institution is to be a State savings association or a savings bank to be supervised by the Office of Savings Associations";

(C) in paragraph (4)(D), by inserting "and fitness" after "character"; and

(D) by striking paragraph (5); and

(4) by adding at the end the following:

"(m) ACTIVITIES OF SAVINGS ASSOCIATIONS AND THEIR SUBSIDIARIES.—

"(1) PROCEDURES.—Whenever an insured savings association establishes or acquires control of a company or whenever an insured savings association elects to conduct any new activity through a company that the insured savings association controls, the insured savings association:

"(A) shall notify the Corporation and the Chairman of the Office of Savings Associations not less than 30 days prior to the establishment, or acquisition, of any such new company, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that time such information as each such agency may, by regulation, require;

"(B) except as provided in section 5(t)(3) of the Home Owners' Loan Act of 1933, shall deduct its entire investment in and loans and other financial accommodations to the company from its own capital for the purposes of determining capital adequacy if the company is engaged in activities not permissible for a national bank; and

"(C) shall commence and conduct the activities of the company in accordance with such rules, regulations, and orders as may be established by the Chairman of the Office of Savings Associations.

"(2) ENFORCEMENT POWERS.—With respect to any company controlled by an insured savings association:

"(A) the Corporation and the Chairman of the Office of Savings Associations shall each have, with respect to such company, the respective powers and authorities that each may possess with respect to the insured savings association pursuant to this section or to section 8; and

"(B) the Chairman of the Office of Savings Associations shall have authority to determine, after notice and opportunity for hearing, that the continuation by the insured savings association of its ownership or control of, or its relationship to, the company constitutes a serious risk to the financial safety, soundness, or stability of the insured savings association or is inconsistent with sound banking principles or with the purposes of this Act, and upon making any such determination the agency shall have authority to order the insured savings association to divest itself of control of the company. The Chairman of the Office of Savings Associations shall also have the authority to take any other corrective measures with respect to the company, including the authority to have the company terminate the activities or operations posing such risks, as the agency may deem appropriate.

"(3) ACTIVITIES INCOMPATIBLE WITH DEPOSIT INSURANCE.—

"(A) The Board of Directors is authorized to determine by regulation or order that any specific activity poses a serious threat to the Savings Association Insurance Fund. Prior to adopting any such regulation, the Corporation shall consult with the Chairman of the Office of Savings Associations and shall provide appropriate State supervisors the opportunity to review such regulation and comment thereon, and the Corporation shall specifically take such comments into consideration. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that no Savings Association Insurance Fund member may engage in the activity directly. In addition, no Savings Association Insurance Fund member shall be or become liable for the liabilities or obligations arising out of any such activity conducted indirectly, except to the extent such liability or obligation (i) is in writing, (ii) shall have been executed by the member and person or entity to whom the liability or obligation is owed either contemporaneously with the creation of the liability or obligation, or if the liability or obligation was created prior to the effective date of the FIRRE Act, within one hundred and twenty days of the effective date of the FIRRE Act, (iii) has been approved by the board of directors or an official committee of the member, and (iv) shall have been, continuously, from the time of its creation, an official record of the Savings Association Insurance Fund member.

"(B) Nothing in this section shall limit the authority of the Office of Savings Associations to issue regulations to promote safety and soundness or to enforce compliance with other applicable laws.

"(4) 'COMPANY' DEFINED.—As used in this subsection (m), the term 'company' shall not include an insured financial institution.

"(5) EFFECT ON OTHER AUTHORITY.—Nothing contained in subsection (m) shall derogate from the rights and authorities of the Corporation under other provisions of law.

"(6) APPLICABILITY.—The provision of subparagraphs (A) and (B) of paragraph (1) of this subsection shall not apply to any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or to a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.

"(n) CALCULATION OF CAPITAL.—No appropriate Federal banking agency shall allow any insured financial institution to include an unidentifiable intangible asset in its calculation of compliance with the appropriate capital standard, if such unidentifiable intangible asset was acquired after April 12, 1989, except to the extent permitted under section 5(t)(2)(B) of the Home Owners' Loan Act of 1933.".

SEC. 223. INVESTMENT ACTIVITIES OF STATE SAVINGS ASSOCIATIONS.

The Federal Deposit Insurance Act is amended by adding at the end thereof the following new section:

"SEC. 28. INVESTMENT ACTIVITIES OF SAVINGS ASSOCIATIONS CHARTERED UNDER STATE LAW.

"(a) IN GENERAL.—A savings association chartered under State law shall not, after January 1, 1990, engage as principal in any type of activity, or in any activity in an amount, that is not permissible for a Federal savings association unless—

"(1) the Corporation has determined that the activity would pose no significant risk to the affected deposit insurance fund; and

"(2) the savings association is and remains in compliance with the fully phased-in capital standards prescribed pursuant to section 5(t) of the Home Owners' Loan Act of 1933.

"(b) DIFFERENCES OF MAGNITUDE.—Notwithstanding subsection (a)(1), if an activity is permissible for a Federal savings association, a savings association chartered under State law may engage as principal in that activity in an amount that is greater than the amount permissible for a Federal savings association if—

"(1) the Corporation has not determined that engaging in that amount of the activity poses any significant risk to the deposit insurance fund;

"(2) the savings association chartered under State law is described in subsection (a)(2); and

"(3) the activity—

"(A) does not involve acquiring or retaining shares of one or more subsidiary corporations in an aggregate amount greater than that permissible for a Federal savings association under section 5(c)(4)(B) of the Home Owners' Loan Act of 1933;

"(B) is not described in section 5(c)(2)(B) of the Home Owners' Loan Act of 1933; and

"(C) does not involve acquiring or retaining corporate debt securities that are not of investment grade in an amount greater than the amount that a Federal savings association may acquire directly.

"(c) EQUITY INVESTMENTS.—

"(1) IN GENERAL.—Notwithstanding subsections (a) and (b), a savings association chartered under State law shall not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to shares of one or more service corporations acquired or retained pursuant to subsection (a).

"(3) TRANSITIONAL RULE.—

"(A) Notwithstanding paragraph (1), if a savings association held an equity investment on the date of enactment of the FIRRE Act, the savings association may retain the equity investment for such a period and on such terms as the Corporation may determine by regulation or order pursuant to subparagraph (B).

"(B) The Corporation shall require savings associations to divest any equity investment that is not permissible under paragraph (1) or (2) as quickly as can be prudently done, and in any event not later than July 1, 1994.

"(d) CORPORATE DEBT SECURITIES THAT ARE NOT OF INVESTMENT GRADE.—

"(1) IN GENERAL.—Except as provided in paragraph (2)(A), a savings association chartered under State law shall not, directly or through a subsidiary, acquire or retain corporate debt securities that are not of investment grade in an amount greater than the amount that the savings association could acquire directly if it were a Federal savings association unless—

"(A) the savings association chartered under State law has filed an application, and the Corporation has determined that no significant risk to the deposit insurance fund would be posed if the savings association held the amount in question; and

"(B) the savings association is described in subsection (a)(2) (or would be described in subsection (a)(2) if paragraph 4 did not apply) or in paragraph (2)(D) of this subsection.

"(2) REVIEW.—

"(A) A savings association chartered under State law may, directly or through a subsidiary, during the 12-month period following the date of enactment of the FIRRE Act, retain corporate debt securities that are not of investment grade in an amount greater than the amount that a Federal savings association may acquire directly.

"(B) A savings association chartered under State law that wishes to retain such securities directly or through a subsidiary after that 12-month period in an amount greater than the amount that a Federal savings association may acquire directly shall file a written application with the Corporation not later than 90 days after the date of enactment in the manner prescribed by the Corporation. The Corporation shall approve or deny the application not later than 10 months after the date of enactment.

"(C) In approving an application, the Corporation may impose such conditions as it determines to be appropriate pursuant to paragraph (1), including—

"(i) limiting the amount of such securities to any amount greater than or equal to the amount that a Federal savings association may acquire directly;

"(ii) requiring that any amount of such securities greater than the amount that a Federal savings association may acquire directly be deducted from the savings association's capital for purposes of section 5(t) of the Home Owners' Loan Act of 1933; or

"(iii) requiring that such securities be held by a subsidiary subject to paragraph (4).

"(D) During a reasonable period (to be determined by the Corporation) not to exceed 6 months from the date on which the Corporation makes a determination under subparagraph (B) with respect to a savings association, the savings association is described in this subparagraph for purposes of paragraph (1)(B) if the Corporation is satisfied that the savings association will be described in subsection (a)(2) (or would be described in subsection (a)(2) if paragraph (4) did not apply) before that period expires.

"(3) TRANSITIONAL RULES.—To the extent that the Corporation does not permit a savings association to retain such securities in an amount greater than the amount that a Federal savings association may acquire directly, the savings association shall divest itself of the excess amount in accordance with the following schedule:

"During the following period:	The association may retain not more than the following percentage of the excess amount:
The 1-year period beginning 12 months after that date of enactment	75 percent
The 1-year period beginning 24 months after that date of enactment	50 percent
The 1-year period beginning 36 months after that date of enactment	25 percent
Thereafter	0 percent

"(4) SECURITIES HELD THROUGH A SUBSIDIARY.—Except as provided in paragraph (1), if a savings association chartered under State law holds through a subsidiary corporate debt securities that are not of investment grade and the aggregate amount of such securities held by the savings association and its subsidiaries is greater than the amount that a Federal savings association may acquire directly, then the excess amount shall be deducted from the savings association's capital in determining that capital for purposes of section 5(t) of the Home Owners' Loan Act of 1933.

"(e) DETERMINATIONS.—The Corporation may make determinations under this section by regulation or order.

"(f) DEFINITIONS.—

"(1) The term 'activity' includes acquiring or retaining any investment.

"(2) Notwithstanding paragraph (1), subsections (a) and (b) shall not be construed to require a savings association to divest itself of any assets acquired before the date of enactment of the FIRRE Act.

"(g) OTHER AUTHORITY NOT AFFECTED.—This section does not limit—

"(1) any other authority of the Corporation; or

"(2) any authority of the Chairman of the Office of Savings Associations or of a State to impose more stringent restrictions.".

SEC. 224. LOAN TO VALUE RATIOS.

(a) IN GENERAL.—The Federal Deposit Insurance Act is amended by adding at the end thereof the following:

"SEC. 29. LOAN TO VALUE RATIOS.

"(a) In General.—Each insured financial institution in making a loan secured by real property shall be subject to the following limitations:

"(1) For a loan or other advance to finance the purchase of or to refinance outstanding indebtedness on property improved by a completed one- to four-family dwelling, the amount of the loan or advance may not exceed 95 percent of the appraised value of the property.

"(2) For a loan secured by other real estate—

"(A) if the property is improved by one or more completed structures, the amount of the loan or advance may not exceed 80 percent of the appraised value of the property;

"(B) if the property is improved but has no completed structure, the amount of the loan or advance may not exceed 70 percent of the appraised value; or

"(C) if the property is undeveloped and the loan is not a loan to an active farming operation secured by agricultural land, the amount of the loan or advance may not exceed 65 percent of the appraised value.

"(b) Exceptions.—Subsection (a) does not apply to any loan the payment of principal and interest of which is insured or guaranteed by a Federal agency, as defined in regulations of the appropriate Federal regulatory agency.

"(c) Regulatory Authority.—The limitations contained in subsection (a) may be adjusted by the appropriate Federal regulatory agency upon a determination that—

"(1) the limitation which would otherwise apply is unreasonable and limits safe and sound investment activities; or

"(2) the limitation that would otherwise apply does not sufficiently curtail unsafe and unsound practices.

"(d) Enforcement.—Compliance with the requirement imposed under this section shall be enforced under section 8 of this Act.".

(b) Conforming Amendment.—Section 24 of the Federal Reserve Act (12 U.S.C. 371) is repealed.

SEC. 225. NONDISCRIMINATION.

Section 22 of the Federal Deposit Insurance Act (12 U.S.C. 1830) is amended to read as follows: "It is not the purpose of this Act to discriminate in any manner against State nonmember banks or State savings associations and in favor of national or member banks or Federal savings associations, respectively; but the purpose is to provide all banks and savings associations with the same opportunity to obtain and enjoy the benefits of this Act.".

SEC. 226. BROKERED DEPOSITS.

(a) Definitions.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended by adding at the end the following:

"(ff)(1) The term 'deposit broker' means—

"(A) any person engaged in the business of placing funds, or facilitating the placement of funds, of third parties with insured banks or the business of placing funds with insured banks for the purpose of selling interests in those deposits to third parties; and

"(B) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured bank to use the proceeds of the account to fund a prearranged loan.

"(2) The term 'deposit broker' does not include—

"(A) an insured bank, with respect to funds placed with that bank;

"(B) an employee of an insured bank, with respect to funds placed with the employing bank;

"(C) a trust department of an insured bank or of an institution insured by the Federal Savings and Loan Insurance Corporation, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

"(D) the trustee of a pension or other employee benefit plan, with respect to funds of the plan;

"(E) a person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that that person is performing managerial functions with respect to the plan;

"(F) the trustee of a testamentary account;

"(G) the trustee of an irrevocable trust (other than one described in paragraph (1)(B)), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

"(H) a trustee or custodian of a pension or profit-sharing plan qualified under section 401(d) or 408(a) of the Internal Revenue Code of 1986; or

"(I) an agent or nominee whose primary purpose is not the placement of funds with depository institutions.

"(gg) The term 'employee' includes only an employee—

"(1) who is employed exclusively by the insured bank for which he or she is soliciting deposits;

"(2) whose compensation is primarily in the form of a salary;

"(3) who does not share his or her compensation with a deposit broker; and

"(4) whose office space or place of business is used exclusively for the benefit of his or her insured bank/employer.

"(hh) The term 'troubled institution' means an insured financial institution which is entitled to the benefits of insurance under this Act and which the Corporation has determined for the purpose of section 30 does not meet its minimum capital requirements.".

(b) Applicability of Limitation.—The Federal Deposit Insurance Act is amended by adding at the end the following:

"SEC. 30. BROKERED DEPOSITS.

"(a) In General.—A troubled institution may not accept funds deposited into one or more deposit accounts by or through a deposit broker.

"(b) Grandfathered Accounts.—The prohibition contained in subsection (a) shall not apply to any account opened before the effective date of the FIRRE Act unless such account has been added to or renewed after the effective date of such Act.

"(c) Waiver Authority.—The Corporation is authorized, on a case-by-case basis, and upon application by an insured financial institution, to waive the applicability of subsections (a) and (b) upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice.".

SEC. 227. CONTRACTS BETWEEN FINANCIAL INSTITUTIONS AND PERSONS PROVIDING GOODS, PRODUCTS, OR SERVICES.

(a) The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 31. CONTRACTS BETWEEN FINANCIAL INSTITUTIONS AND PERSONS PROVIDING GOODS, PRODUCTS, OR SERVICES.

"(a) IN GENERAL.—An insured financial institution shall not enter into a written or oral contract with any person related to the provision of goods, products, or services to or for the benefit of such financial institution if such contract contains any of the following:

"(1) A provision under which such person agrees to purchase any asset of such financial institution unless the asset is directly related to the provision of such goods, products, or services;

"(2) A provision under which the person providing such goods, products, or services agrees to purchase stock of, invest capital in, or make a deposit in such financial institution;

if such a contract term or provision has an anticompetitive effect or would adversely affect the safety or soundness of the financial institution.

"(b) PROVISION TO APPLY TO HOLDING COMPANIES.—For purposes of this section, the term 'insured financial institution' includes a 'bank holding company' and a 'savings and loan holding company'.

"(c) REGULATIONS.—The Corporation shall promulgate regulations necessary to carry out the provisions of this section.".

(b) The General Accounting Office shall conduct a study of the contracting practices among third-party vendors and insured financial institutions and shall report on the extent to which such contracts include questionable provisions that may tend to erode financial integrity and soundness by among other things allowing an institution to artificially inflate its capital base or to divest itself of a troublesome asset. Such report shall be submitted not later than six months after the date of enactment of this Act to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

TITLE III—CHAIRMAN OF THE OFFICE OF SAVINGS ASSOCIATIONS

SEC. 301. AMENDMENT TO HOME OWNERS' LOAN ACT OF 1933.

The Home Owners' Loan Act of 1933 is amended to read as follows:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Home Owners' Loan Act of 1933'.

"SEC. 2. DEFINITIONS.

"For the purpose of this Act—

"(1) The term 'Chairman' means the Chairman of the Office of Savings Associations.

"(2) The term 'savings association' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(3) The term 'Federal savings association' means a Federal savings association or a Federal savings bank chartered under section 5(o) of this Act.

"(4) The term 'Federal banking agencies' means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

"SEC. 3. SUPERVISION OF SAVINGS ASSOCIATIONS.

"(a) In General.—The Chairman is authorized to provide for the examination, safe and sound operation, and regulation of savings associations. The Chairman may issue rules and regulations to carry out the responsibilities of the Chairman. The authority conferred by this section is intended to encourage savings associations to provide credit for housing safely and soundly.

"(b) Uniform Standards.—The Chairman shall by regulation prescribe uniform accounting and disclosure standards for all savings associations to be used in determining their compliance with all applicable rules and regulations. These uniform accounting standards shall incorporate generally accepted accounting principles to the same degree that generally accepted accounting principles are used to determine compliance with rules and regulations issued by the Federal banking agencies, shall require full compliance therewith no later than the schedule provided in 12 C.F.R. section 563.23-3 (as in effect immediately prior to the effective date of the FIRRE Act), and shall be coordinated with the capital standards established by the Chairman pursuant to section 5(t)(1) of this Act. No deviation from full compliance with the uniform accounting standards shall be permitted after December 31, 1993. The Chairman may, at any time, prescribe more stringent accounting principles if the Chairman determines that they are necessary to ensure the safe and sound operation of savings associations.

"(c) Stringency of Standards.—The rules, regulations, and policies of the Chairman governing the safe and sound operation of savings associations, including policies governing asset classification and appraisals, shall be no less stringent than those of the Office of the Comptroller of the Currency.

"(d) Investment of Funds.—The savings accounts and share accounts held by savings associations insured by the Federal Deposit Insurance Corporation shall be lawful investments and may be accepted as security for all public funds of the United States, fiduciary and trust funds under the authority or control of the United States or any officer or officers thereof, and for the funds of all corporations organized under the laws of the United States (subject to any regulatory authority otherwise applicable), regardless of any limitation of law upon the investment of any such funds or upon the acceptance of security for the investment or deposit of any of such funds.

"(e) Lotteries.—(1) A savings association may not—

"(A) deal in lottery tickets;

"(B) deal in bets used as a means or substitute for participation in a lottery;

"(C) announce, advertise, or publicize the existence of any lottery;

"(D) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

"(2) A savings association may not permit—

"(A) the use of any part of any of its own offices by any person for any purpose forbidden to the savings association under paragraph (1), or

"(B) direct access by the public from any of its own offices to any premises used by any person for any purpose forbidden to the savings association under paragraph (1).

"(3) As used in this subsection—

"(A) The term 'deal in' includes making, taking, buying, selling, redeeming, or collecting.

"(B) The term 'lottery' includes any arrangement whereby three or more persons (the 'participants') advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the 'winners') will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes—

"(i) a random selection;

"(ii) a game, race, or contest; or

"(iii) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

"(C) The term 'lottery ticket' includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

"(4) Nothing contained in this subsection prohibits a savings association from accepting funds from, or performing any lawful services for, a State operating a lottery, or an officer or employee of that State who is charged with the administration of the lottery.

"(5) The Chairman shall prescribe such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

"(f) LENDING DISCLOSURES.—No savings association shall make any Federally related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the savings association. At the request of the Chairman of the Federal Home Loan Bank System, the savings association shall report to the Chairman on the identity of such person and the nature and amount of the loan.

"(g) USURY OVERRIDE.—(1) If the applicable rate prescribed in this section exceeds the rate of a savings association would be permitted to charge in the absence of this section, such savings association may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such savings association is located or at the rate allowed by the laws of the State, territory, or district where such savings association is located, whichever may be greater.

"(2) If the rate prescribed in paragraph (1) exceeds the rate such savings association would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving, or charging a greater rate of interest than that prescribed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from the savings association taking or receiving such interest.

"(h) FORM AND MATURITY OF SECURITIES.—No savings association shall issue securities which guarantee a definite maturity except with the specific approval of the Chairman, or issue any securities the form of which has not been approved by the Chairman.

"(i) AUDIT.—Each savings association and service corporation thereof shall, at its own expense, be audited at least once in every calendar year. The Chairman shall establish rules governing the selection of independent auditors by savings associations and service corporations and the performance of auditing services. Not later than 90 days after the date of enactment of the FIRRE Act, the Chairman shall promulgate regulations establishing procedures for monitoring compliance with the rules established under this subsection. If the Chairman finds that any audit of a savings association under this subsection does not comply with such rules, the Chairman shall take appropriate action to assure compliance. Such appropriate action may, but shall not necessarily, include that an audit be performed again, at the expense of the auditor.

"SEC. 4. CHAIRMAN OF OFFICE OF SAVINGS ASSOCIATIONS

"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—There is established an Office of Savings Associations. The Office shall be a bureau in the Department of the Treasury. All power and authority vested in the Federal Home Loan Bank Board or its Chairman immediately prior to enactment of the FIRRE Act are, except as otherwise provided in that Act or the Federal Home Loan Bank Act, vested in the Chairman of the Office of Savings Associations. On the date which is 60 days after enactment of the FIRRE Act, the Federal Home Loan Bank Board shall cease to exist and shall for all purposes be considered dissolved. Prior thereto, all employees of the Federal Home Loan Bank Board shall be transferred as provided in title IV of the FIRRE Act. During the period between enactment of such Act and dissolution of the Federal Home Loan Bank Board, the Chairman of the Federal Home Loan Bank Board may act on behalf of the Federal

Home Loan Bank Board as necessary to accomplish the dissolution thereof and the Chairman may utilize the services of the employees of the Federal Home Loan Bank Board to perform services for the Office of Savings Associations.

"(2) Duties.—The Chairman shall supervise savings associations and shall promulgate and enforce such rules, regulations, and orders, as are necessary from time to time for carrying out the provisions of this Act and all other laws it is his or her duty to implement. The Chairman shall perform his or her duties under the general direction of the Secretary of the Treasury. Nothing in this section may be construed to permit the Secretary of the Treasury to intervene in any matter or proceeding before the Chairman.

"(b) Appointment.—

"(1) In general.—The Chairman, who shall be a citizen of the United States, shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold office for a term of 5 years unless sooner removed by the President, upon reasons to be communicated by the President to the Senate.

"(2) Transitional provision.—Notwithstanding subsection (a) or paragraph (1), the individual serving as the Chairman of the Federal Home Loan Bank Board on the date of enactment of the FIRRE Act shall be the Chairman of the Office of Savings Associations until the date on which his term as Chairman of the Federal Home Loan Bank Board would have expired.

"(3) Continued service until successor appointed.—The Chairman may continue to serve until a successor has been appointed and qualified.

"(c) Appointment of Staff.—

"(1) In general.—The Chairman of the Office of Savings Associations may employ, direct, and fix the compensation of such employees, attorneys, and agents as the Chairman deems necessary to carry out his or her duties and report thereon to the Congress. Such compensation shall be determined solely by the Chairman and without regard to the provisions of any law or regulation, including the provisions of title 5, United States Code, relating to the compensation of Federal officers and employees. In directing and fixing such compensation, the Chairman shall consult with, and seek to maintain comparability with the compensation at, the other Federal bank regulatory agencies.

"(2) Administrative provisions.—The Chairman may—

"(A) designate who shall serve in the Chairman's absence; and

"(B) notwithstanding any other provisions of law, may delegate to any duly authorized employee, representative, or agent any power vested in the Chairman by law.

"(d) Salaries and Expenses.—The salaries of the Chairman and other employees of the Office and all other expenses thereof may be paid from assessments levied under this Act, and the funds derived from such assessments may be deposited by the Chairman in the same manner as authorized under section 5234 of the Revised

Statutes and shall not be construed to be Government Funds or appropriated monies, or subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or any other authority. Such compensation, other than that of the Chairman, shall be paid without regard to the provisions of other laws applicable to officers or employees of the United States.

"(e) AUTHORITIES.—Notwithstanding any other provision of law, the Chairman shall have and may exercise all functions which the Chairman of the Federal Home Loan Bank Board, the Federal Home Loan Bank Board, and the Federal Savings and Loan Insurance Corporation had or could exercise immediately prior to August 11, 1954, or immediately prior to June 24, 1954, which are not expressly transferred to or consolidated into the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or the Federal Home Loan Bank Agency pursuant to the FIRRE Act.

"(f) ANNUAL REPORT.—The Chairman of the Federal Home Loan Bank System shall make an annual report to Congress.

"(g) COMMUNICATIONS TO THE CONGRESS.—(1) Whenever the Chairman submits any budget estimate or request to any officer or employee in the executive branch of the Government, including the President or the Office of Management and Budget, he or she shall concurrently transmit copies of that estimate or request to the Congress.

"(2) Whenever the Chairman transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, he or she shall concurrently transmit copies thereof to the Congress. No officer or agency of the United States shall have any authority to require the Chairman to submit legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Chairman voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Chairman shall include a description of such actions in the legislative recommendations, testimony, or comments on legislation which is transmitted to the Congress.

"SEC. 4A. LIQUIDITY.

"(a) IN GENERAL.—The purpose of this section is to provide a means for creating meaningful and flexible liquidity in savings associations and other members which can be increased when mortgage money is plentiful, maintained in easily liquidated instruments, and reduced to add to the flow of funds to the mortgage market in periods of credit stringency. More flexible liquidity will help support sound mortgage credit and a more stable supply of such credit.

"(b) MAINTENANCE OF ACCOUNT.—(1) Any institution which is a member of a Federal Home Loan Bank or which is a savings association shall maintain the aggregate amount of its assets of the following types at not less than such amount as, in the opinion of the Chairman, is appropriate:

"(A) cash;

"(B) to such extent as the Chairman may approve for the purposes of this section, time and savings deposits in Federal Home Loan Banks, institutions which are, or are eligible to become, members thereof, and commercial banks;

"(C) to such extent as the Chairman may so approve, such obligations, including such special obligations, of the United States, a State, any territory or possession of the United States, or a political subdivision, agency, or instrumentality of any one or more of the foregoing, and bankers' acceptances, as the Chairman may approve;

"(D) to such extent as the Chairman may so approve, shares or certificates of any open-end management investment company which is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the portfolio of which is restricted by such investment company's investment policy, changeable only if authorized by shareholder vote, solely to any of the obligations or other investments enumerated in subparagraphs (A) through (C), (F), and (G);

"(E) balances maintained in a Federal Reserve bank or passed through a Federal Home Loan Bank or another depository institution to a Federal Reserve bank pursuant to the Federal Reserve Act;

"(F) to such extent as the Chairman may approve as liquid, highly rated corporate debt obligations with 3 years or less remaining until maturity; and

"(G) to such extent as the Chairman may so approve, highly rated commercial paper with 270 days or less remaining until maturity.

"(2) The requirement prescribed by the Chairman pursuant to this subsection (hereinafter in this section referred to as the 'liquidity requirement') may not be less than 4 percent or more than 10 percent of the obligation of the institution on withdrawable accounts and borrowings payable on demand or with unexpired maturities of one year or less, or in the case of institutions which are insurance companies, such other base or bases as the Chairman may determine to be comparable. The Chairman shall prescribe rules and regulations to implement the provisions of this subsection.

"(c) CALCULATION.—The amount of any institution's liquidity requirement, and any deficiency in compliance therewith, shall be calculated as the Chairman shall prescribe. The Chairman may prescribe different liquidity requirements, within the limitations specified herein, for different classes of institutions, and for such purposes the Chairman is authorized to classify institutions according to type, size, location, rate of withdrawals, or, without limitation by or on the foregoing, on such other basis or bases of differentiation as the Chairman may deem to be reasonably necessary or appropriate for effectuating the purposes of this section.

"(d) DEFICIENCY ASSESSMENTS.—For any deficiency in compliance with the liquidity requirements, the Chairman may, in his or her discretion, assess a penalty consisting of the payment by the institution of such sum as may be assessed by the Chairman but not in excess of a rate equal to the highest rate on Federal Home Loan Bank advances of one year or less, plus 2 percent per annum, on the amount of the deficiency for the period with respect to which the deficiency existed. Any penalty assessed under this subsection against a member shall be paid to the Federal Home Loan Bank of which it is a member, and any such penalty assessed against a savings association which is not a member shall be paid to the Chairman. The right to assess or to recover, or to assess and recover, any such penalty is not abated or affected by an association's ceasing to be a member or ceasing to be insured. The Chairman may authorize or require that, at any time before collection thereof, and whether before or after the bringing of any action or other legal proceeding, the obtaining of any judgment or other recovery, or the issuance or levy of any execution or other legal process therefor, and with or without consideration, any such penalty or recovery be compromised, remitted, or mitigated in whole or part. The penalties authorized under this subsection are in addition to all remedies and sanctions otherwise available.

"(e) REDUCTION OR SUSPENSION.—Whenever the Chairman deems it advisable in order to enable an institution to meet withdrawals or to pay obligations, the Chairman may, to such extent and subject to such conditions as it may prescribe, permit the institution to reduce its liquidity below the minimum amount. Whenever the Chairman determines that conditions of national emergency or unusual economic stress exist, the Chairman may suspend any part or all of the liquidity requirements hereunder for such period as the Chairman may prescribe. Any such suspension, unless sooner terminated by its terms or by the Chairman, shall terminate at the expiration of ninety days next after its commencement, but nothing in this sentence prevents the Chairman from again exercising, before, at, or after any such termination, the authority conferred by this subsection.

"(f) REGULATING AUTHORITY.—The Chairman is authorized to issue such rules and regulations, including definitions of terms used in this section, to make such examinations, and to conduct such investigations as it deems necessary or appropriate to effectuate the purposes of this section. The reasonable cost of any such examination or investigation, as determined by the Chairman, shall be paid by the association.

"SEC. 4B. APPLICABILITY.

"(a) IN GENERAL.—Sections 1, 2, 3, 5(d), 5(i), 5(o), 5(p), 5(q), 5(s), 5(t), 5(u), 5(v), 5(w), 6, 7, 9, 10, 11, and 12, of this Act apply to all savings associations.

"(b) Sections 5(a), 5(b), 5(c), 5(e), 5(f), 5(g), 5(h), 5(j), 5(l), 5(m), 5(n), 5(r), and 8 of this Act apply to Federal savings associations.

"SEC. 5. FEDERAL SAVINGS ASSOCIATIONS.

"(a) IN GENERAL.—In order to provide thrift institutions for the deposit or investment of funds and for the extension of credit for homes and other goods and services, the Chairman is authorized, under such rules and regulations as the Chairman may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings and loan associations, or Federal savings banks, and to issue charters therefor, giving primary consideration to the best practices of thrift institutions in the United States. The lending and investment authorities are conferred by this section to provide such institutions the flexibility necessary to maintain their role of providing credit for housing consistent with the safe and sound operation of Federal savings associations.

"(b) **Deposits.**—(1)(A) A Federal savings association may raise capital in the form of such savings deposits, shares, or other accounts, for fixed, minimum, or indefinite periods of time (all of which are referred to in this section as savings accounts), or in the form of such demand accounts of those persons or organizations that have a business, corporate, commercial, or agricultural loan relationship with the association as are authorized by its charter or by regulations of the Chairman, and may issue such passbooks, time certificates of deposit, or other evidence of accounts as are so authorized.

"(B) A Federal savings association may accept a demand account from itself and may also accept demand accounts from a commercial, corporate, business, or agricultural entity for the sole purpose of effectuating payments thereto by a nonbusiness customer. A Federal savings association may not pay interest on a demand account. All savings accounts and demand accounts shall have the same priority upon liquidation. Holders of accounts and obligors of a Federal savings association shall, to such extent as may be provided by its charter or by regulations of the Chairman, be members of the association, and shall have such voting rights and such other rights as are thereby provided.

"(C) Except as may be otherwise authorized by a Federal savings association's charter or regulation of the Chairman in the case of savings accounts for fixed or minimum terms of not less than 14 days, the payment of any savings account shall be subject to the right of the Federal savings association to require such advance notice, not less than fourteen days, as shall be provided for by the charter of the association or the regulations of the Chairman.

"(D) The payment of withdrawals from accounts in the event a Federal savings association does not pay all withdrawals in full (subject to the right of the association, where applicable, to require notice) shall be subject to such rules and procedures as may be prescribed by the association's charter or by regulation of the Chairman, but any Federal savings association which, except as authorized in writing by the Chairman, fails to make full payment of any withdrawal when due shall be deemed to be in an unsafe or unsound condition to transact business within the meaning of subsection (d) of this section.

"(E) Accounts may be subject to check or to withdrawal or transfer on negotiable or transferable or other order or authorization to the Federal savings association, as the Chairman may by regulation provide.

"(F) Notwithstanding any limitation of this section, Federal savings associations may establish remote service units for the purpose of crediting savings or demand accounts, debiting such accounts, crediting payments on loans, and the disposition of related financial transactions, as provided in regulations prescribed by the Chairman.

"(2) To such extent as the Chairman may authorize by regulation or advice in writing, a Federal savings association may borrow, may give security, may be surety as defined by the Chairman and may issue such notes, bonds, debentures, or other obligations, or other securities, including capital stock, as the Chairman may so authorize.

"(3) Subject to regulation by the Chairman but without regard to any other provision of this subsection, any Federal savings association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 percent of its withdrawable accounts is authorized to borrow funds from a State mortgage finance agency of the State in which the head office of such association is situated to the same extent as State law authorizes a savings association organized under the laws of such State to borrow from the State mortgage finance agency, except that such a Federal savings association may not make any loan of such funds at an interest rate which exceeds by more than 1¾ percent per annum the interest rate paid to the State mortgage finance agency on the obligations issued to obtain the funds so borrowed.

"(4) A Federal savings association is authorized, subject to such regulations as the Chairman may prescribe, to issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations.

"(5)(A) In accordance with rules and regulations issued by the Chairman, mutual capital certificates may be issued and sold directly to subscribers or through underwriters, and such certificates shall constitute part of the general reserve and net worth of the issuing Federal savings association. The Chairman, in its rules and regulations relating to the issuance and sale of mutual capital certificates, shall provide that such certificates—

"(i) shall be subordinate to all savings accounts, savings certificates, and debt obligations;

"(ii) shall constitute a claim in liquidation on the general reserves, surplus, and undivided profits of the Federal savings association remaining after the payment in full of all savings accounts, savings certificates, and debt obligations;

"(iii) shall be entitled to the payment of dividends; and

"(iv) may have a fixed or variable dividend rate.

"(B) Net worth certificates issued by a Federal savings association pursuant to section 406(f) of the National Housing Act shall constitute part of the general reserves and net worth of the Federal savings association, in accordance with the rules and regulations of the Chairman.

"(C) The Chairman shall provide in rules and regulations for charging losses to mutual capital certificates, net worth certificates issued pursuant to section 406(f) of the National Housing Act, reserves, and other net worth accounts.

"(c) LOANS AND INVESTMENTS.—A Federal savings association may to such extent, and subject to such rules and regulations as the Chairman may prescribe from time to time, invest in, sell, or otherwise deal with the following loans, or other investments:

"(1) LOANS OR INVESTMENTS WITHOUT PERCENTAGE OF ASSETS LIMITATION.—Without limitation as a percentage of assets, the following are permitted:

"(A) ACCOUNT LOANS.—Loans on the security of its savings accounts and loans specifically related to transaction accounts.

"(B) RESIDENTIAL REAL PROPERTY LOANS.—Loans on the security of liens upon residential real property.

"(C) UNITED STATES GOVERNMENT SECURITIES.—Investments in obligations of, or fully guaranteed as to principal and interest by, the United States.

"(D) FEDERAL HOME LOAN BANK AND FEDERAL NATIONAL MORTGAGE ASSOCIATION SECURITIES.—Investments in the stock or bonds of a Federal home loan bank or in the stock of the Federal National Mortgage Association.

"(E) FEDERAL HOME LOAN MORTGAGE CORPORATION INSTRUMENTS.—Investments in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act.

"(F) OTHER GOVERNMENT SECURITIES.—Investments in obligations, participations, securities, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association or the Government National Mortgage Association, or any other agency of the United States and an association may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act.

"(G) DEPOSITS.—Investments in time deposits, savings accounts certificates, or accounts of any financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

"(H) STATE SECURITIES.—Investments in obligations of, or issued by, any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision), except that a Federal savings association may not invest more than 10 percent of its capital and surplus in obligations of any one issuer, exclusive of investments in general obligations of any issuer.

"(I) PURCHASE OF INSURED LOANS.—Purchase of loans secured by liens on improved real estate which are insured under provisions of the National Housing Act, or insured as provided in the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code.

"(J) HOME IMPROVEMENT AND MANUFACTURED HOME LOANS.—Loans made for the repair, equipping, alteration, or improvement of any residential real property, and loans made for the purpose of manufactured home financing.

"(K) INSURED LOANS TO FINANCE THE PURCHASE OF FEE SIMPLE.—Loans as to which the Federal savings association has the benefit of insurance under section 240 of the National Housing Act, or of a commitment or agreement therefor.

"(L) LOANS TO FINANCIAL INSTITUTIONS, BROKERS, AND DEALERS.—Loans to financial institutions with respect to which the United States or an agency or instrumentality thereof has any function of examination or supervision, or to any broker or dealer registered with the Securities and Exchange Commission, secured by loans, obligations, or investments in which the Federal savings association has the statutory authority to invest directly.

"(M) LIQUIDITY INVESTMENTS.—Investments which, at the time of making, are assets eligible for inclusion toward the satisfaction of any liquidity requirement imposed by the Chairman pursuant to section 5A of the Federal Home Loan Bank Act, but only to the extent that the investment is permitted to be so included under regulations of the Chairman or is otherwise authorized.

"(N) INVESTMENT IN THE NATIONAL HOUSING PARTNERSHIP CORPORATION, PARTNERSHIPS, AND JOINT VENTURES.—Investments in shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and investments in any partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of such Act.

"(O) HOUSING AND LAND AND URBAN DEVELOPMENT INSURED OR GUARANTEED INVESTMENTS.—Loans (i) secured by mortgages as to which the Federal savings association has the benefit of insurance under title X of the National Housing Act or of a commitment or agreement for such insurance, or (ii) as to which the Federal savings association has the benefit of any guarantee under title IV of the Housing and Urban Development Act of 1968 or under part B of the National Urban Policy and New Community Development Act of 1970 or under section 802 of the Housing and Community Development Act of 1974, or of a commitment or agreement therefor.

"(P) STATE HOUSING CORPORATION INVESTMENTS.—Investments in, commitments to invest in, loans to, or commitments to lend to any State housing corporation, provided that such obligations or loans are secured directly, or indirectly through an agent or fiduciary, by a first lien on improved real estate which is insured under the provisions of the National Housing Act and that in the event of default, the holder of such obligations or loans would have the right directly, or indirectly through an agent or fiduciary, to cause to be subject to the satisfaction of such obligations or loans the real estate described in the first lien or the insurance proceeds under the National Housing Act.

"(Q) INVESTMENT COMPANIES.—A Federal savings association may invest in, redeem, or hold shares or certificates in any open-end management investment company which is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the portfolio of which is restricted by such management company's investment policy, changeable only if authorized by shareholder vote, solely to any such investments as a Federal savings association by law or regulation may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal with. The Chairman shall prescribe rules and regulations to implement the provisions of this subparagraph.

"(R) MORTGAGE BACKED SECURITIES.—Investments in securities that—

"(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or

"(ii) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)), subject to such regulations as the Chairman may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales price, or both.

"(2) LOANS OR INVESTMENTS LIMITED TO A PERCENTAGE OF ASSETS OR CAPITAL.—The following loans or investments are permitted, but authority conferred in the following subparagraphs is limited to not in excess of the following percentages of the assets of the association for each subparagraph:

"(A) COMMERCIAL AND OTHER LOANS.—Secured or unsecured loans for commercial, corporate, business, or agricultural purposes. No Federal savings association may make loans to one borrower under the authority provided by this subparagraph in excess of the amount a national bank having an identical total capital and surplus could lend such borrower. The aggregate amount of loans under this paragraph shall not exceed 10 percent of the assets of a Federal savings association or savings bank.

"(B) NONRESIDENTIAL REAL PROPERTY LOANS.—Loans on the security of liens upon nonresidential real property. The Chairman may not permit a savings association to have outstanding such loans, in the aggregate, at any one time, in excess of 400 percent of the savings association's capital (as determined under subsection (t)), unless he finds that such additional amount will not present a significant risk to the safe and sound operation of the association or class of associations concerned, and that the increased authority is consistent with prudent operating practices. If the Chairman authorizes any savings association to exceed the 400 percent of capital limitation described in the preceding sentence, he shall monitor the condition, including the lending activities, of such association closely to assure compliance with this subparagraph and all other applicable laws and regulations.

"(C) INVESTMENTS IN PERSONALITY.—Investments in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for rental or sale, but such investment may not exceed 10 percent of the assets of the Federal savings association.

"(D) CONSUMER LOANS AND CERTAIN SECURITIES.—A Federal savings association may make secured or unsecured loans for personal, family, or household purposes, including loans reasonably incident to the provision of such credit, and may invest in, sell, or hold commercial paper and corporate debt securities, as defined and approved by the Chairman, except that loans of an association under this subparagraph may not exceed 30 percent of the assets of the association.

"(3) LOANS OR INVESTMENTS LIMITED TO 5 PERCENT OF ASSETS.—The following loans or investments are permitted, but the authority conferred in the following subparagraphs is limited to not in excess of 5 percent of assets of the Federal savings association for each subparagraph:

"(A) EDUCATION LOANS.—Loans made for the payment of educational expenses.

"(B) COMMUNITY DEVELOPMENT INVESTMENTS.—Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974, except that no investment under this subparagraph in such real property may exceed an aggregate investment of 2 percent of the assets of the Federal savings association.

"(C) NONCONFORMING LOANS.—Loans upon the security of or respecting real property or interests therein used for primarily residential or farm purposes that do not comply with the limitations of this subsection.

"(D) CONSTRUCTION LOANS WITHOUT SECURITY.—Investments not exceeding the greater of (i) the sum of its surplus, undivided profits, and reserves, or (ii) 5 percent of the assets of the association, in loans the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate where (I) the Federal savings association relies substantially for repayment on the borrower's general credit standing and forecast of income without other security, or (II) the Federal savings association relies on other assurances for repayment, including but not limited to a guaranty or similar obligation of a third party. Investments under this subsection shall not be included in any percentage of assets or other percentage referred to in this subsection.

"(4) OTHER LOANS AND INVESTMENTS.—The following additional loans and other investments to the extend authorized below:

"(A) BUSINESS DEVELOPMENT CREDIT CORPORATIONS.—A Federal savings association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 percent of its withdrawable accounts is authorized to invest in, lend to, or to commit itself to lend to, any business development credit corporation incorporated in the State in which the home office of the association is located in the same manner and to the same extent as savings associations chartered by such State are authorized, but the aggregate amount of such investments, loans, and commitments of any such Federal savings association shall not exceed one-half of 1 percent of the total outstanding loans of the association or $250,000, whichever is less.

"(B) SERVICE CORPORATIONS.—Investments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the home office of the Federal savings association is located, if the entire capital stock of such corporation is available for purchase only by savings associations of such State and by Federal associations having their home offices in such State, but no Federal savings association may make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 3 percent of the assets of the association, except that not less than one-half of the investment permitted under this subparagraph which exceeds 1 percent of assets shall be used primarily for community, inner-city, and community development purposes.

"(C) FOREIGN ASSISTANCE INVESTMENTS.—Investments in housing project loans having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961 or loans having the benefit of any guarantee under section 224 of such Act, or any commitment or agreement with respect to such loans made pursuant to either of such sections and in the share capital and capital reserve of the Inter-American Savings and Loan Bank. This authority extends to the acquisition, holding, and disposition of loans having the benefit of any guaranty under section 221 or 222 of such Act as hereafter amended or extended, or of any commitment or agreement for any such guaranty. Investments under this subparagraph shall not exceed, in the case of any Federal savings association, 1 percent of the assets of such association.

"(D) SMALL BUSINESS INVESTMENT COMPANIES.—A Federal savings association may invest in stock, obligations, or other securities of any small business investment company formed pursuant to section 301(d) of the Small Business Investment Act of 1958, for the purpose of aiding members of the Federal Home Loan Bank System, but no Federal savings association may make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 percent of the assets of such association.

"(5) DEFINITIONS.—As used in this subsection—

"(A) the terms 'residential real property' or 'residential real estate' mean leaseholds, homes (including condominiums and cooperatives, except that in connection with loans on individual cooperative units, such loans shall be adequately secured as defined by the Chairman) and, combinations of homes or dwelling units and business property, involving only minor or incidental business use, or property to be improved by construction of such structures;

"(B) the term 'loans' includes obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment; and

"(C) the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and any territory or possession of the United States.

"(d) REGULATORY AUTHORITY.—

"(1) IN GENERAL.—

"(A) ENFORCEMENT.—The Chairman shall have power to enforce this section, section 8 of the Federal Deposit Insurance Act, and rules and regulations made hereunder. In the enforcement of any provision of this section or rules and regulations made hereunder, or any other law or regulation, or in any other action, suit, or proceeding to which it is a party or in which it is interested, and in the administration of conservatorships and receiverships, the Chairman is authorized to act in its own name and through its own attorneys. Except as otherwise provided herein, the Chairman shall be subject to suit (other than suits on claims for money damages) by any Federal savings association or director or officer thereof with respect to any matter under this section or any other applicable law, or rules or regulations thereunder, in the United States district court for the judicial district in which the home office of the savings association is located, or in the United States District Court for the District of Columbia, and the Chairman may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

"(B) ANCILLARY PROVISIONS.—(i) In making examinations of savings associations, examiners appointed by the Chairman shall have power to make such examinations of the affairs of all affiliates of such savings associations as shall be necessary to disclose fully the relations between such savings associations and their affiliates and the effect of such relations upon such savings associations. For purposes of this subsection, the term 'affiliate' shall have the same meaning as where used in section 2(b) of the Banking Act of 1933 (12 U.S.C. 221a(b)), except that the term 'member bank' in said section 2(b) shall be deemed to refer to a savings association.

"(ii) In the course of any examination of any savings association, upon request by any authorized personnel or agents of the Chairman of the Office of Savings Associations, prompt and complete access shall be given to all savings association officers, directors, employees, and agents; and to all relevant books, records, or documents of any type.

"(iii) Upon request made in the course of supervision or oversight of any savings association, for the purpose of acting on any application or determining the condition of any savings association, including whether operations are being conducted safely, soundly, or in compliance with charters, laws, rules, regulations, directives, written agreements, or conditions imposed in writing in connection with the granting of an application or other request, any authorized personnel or agents of the Chairman of the Office of Savings Associations shall be given prompt and complete access to all savings association officers, directors, employees, and agents; and to all relevant books, records, or documents of any type.

"(iv) In the event that prompt and complete access upon request is not given as required in this subsection, any authorized personnel or agent of the Chairman shall be authorized to apply to the United States district court for the judicial district or the United States court in any territory in which the principal office of the institution is located, or in which the person denying such access resides or carries on business for an injunction prohibiting denial of access to persons or prohibiting the withholding of information and may seek an order requiring that access to persons or information be promptly provided.

"(v) In connection with examinations of savings associations and affiliates thereof, the Chairman or his or her designated representatives shall have power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such savings association or affiliate thereof, and to issue subpoenas and subpenas duces tecum, and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the principal office of the savings association or affiliate thereof is located, or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpoena.

"(vi) In the course of or in connection with any proceeding under this section, the Chairman or his designated representatives, including any person designated to conduct any hearing under this section, shall have power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Chairman is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection or section 10(c) of the Federal Deposit Insurance Act, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of the Chairman in connection with this section shall be considered as nonadministrative expenses. Any court having jurisdiction of any proceeding instituted under this section by a savings association, or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the savings association or from its assets.

"(C) References in this subsection to savings account holders and to members of associations shall be deemed to be references to holders of withdrawable accounts in institutions over which the Chairman has any statutory power of examination or supervision as provided in this paragraph, and references therein to boards of directors of associations shall be deemed to be references to boards of directors or other governing boards of such institutions.

"(2) RECEIVERSHIPS.—

"(A) IN GENERAL.—The grounds for the appointment of a conservator or receiver for a Federal savings association shall be one or more of the following: (i) insolvency in that the assets of the association are less than its obligations to its creditors and others, including its members; (ii) substantial dissipation of assets or earnings due to any violation or violations of law, rules, or regulations, or to any unsafe or unsound practice or practices; (iii) an unsafe or unsound condition to transact business; (iv) willful violation of a cease-and-desist order which has become final; (v) concealment of books, papers, records, or assets of the savings association or refusal to submit books, papers, records, or affairs of the association for inspection to any examiner or to any lawful agent of the Chairman; (vi)(I) the association is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business, and (II) there is no reasonable prospect that the association will be able to meet such demands or pay such obligations without Federal assistance; (vii)(I) the association has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and (II) there is no reasonable prospect for the replenishment of the capital of the association without Federal assistance; or (viii) the failure to obtain a bank charter within the 3-year period required by section 10(m)(4) of this Act. The Chairman shall have exclusive power and jurisdiction to appoint a conservator or receiver. If, in the opinion of the Chairman, a ground for the appointment of a conservator or receiver as herein provided exists, the Chairman is authorized to appoint ex parte and without notice a conservator or receiver for the association. In the event of such appointment, the association may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the Chairman to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the Chairman to remove such conservator or receiver. Upon the commencement of such an action, the court having jurisdiction of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

"(B) GROUNDS FOR APPOINTMENT.—In addition to the foregoing provisions, the Chairman may, without any requirement of notice, hearing, or other action, appoint a conservator or receiver for a Federal savings association if (i) the association, by resolution of its board of directors or of its members, consents to such appointment, or (ii) the association is removed from membership in any Federal home loan bank, or its status as an institution the accounts of which are insured by the Federal Deposit Insurance Corporation is terminated.

"(C) APPOINTMENT.—Notwithstanding any other provision of law, State or Federal, or the constitution of any State, or of this section, the Chairman shall have power and jurisdiction to appoint the Federal Deposit Insurance Corporation as sole conservator or receiver of an insured State savings association, if the Chairman determines that any of the following grounds for the appointment of a conservator or receiver exist with respect to such financial institution:

"(i) insolvency in that the assets of the financial institution are less than its obligations to its creditors and others;

"(ii) substantial dissipation of assets or earnings due to any violation or violations of law, rules, or regulations, or to any unsafe or unsound practice or practices;

"(iii) an unsafe or unsound condition to transact business;

"(iv)(I) the association is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business, and (II) there is no reasonable prospect that the association will be able to meet such demands or pay such obligations without Federal assistance; or

"(v)(I) the savings association has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and (II) there is no reasonable prospect for the replenishment of the capital of the savings association without Federal assistance.

"(D) POWERS.—In such cases the Federal Deposit Insurance Corporation shall have powers and duties specified in subsection (c) and in subsection (l) of section 11 of the Federal Deposit Insurance Act.

"(E) APPROVAL OF STATE OFFICIAL.—(i) The authority conferred by subparagraph (C) shall not be exercised without the written approval of the State official having jurisdiction over the insured State financial institution that one or more of the grounds specified for such exercise exist.

"(ii) If such approval has not been received within 30 days of receipt of notice to the State that the Chairman has determined such grounds exist, and the Chairman has responded in writing to the State's written reasons, if any, for withholding approval, then the Chairman may proceed without State approval.

"(F) COURT ACTION.—Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver, or, except at the instance of the Chairman, restrain or affect the exercise of powers or functions of a conservator or receiver.

"(G) POWERS.—A conservator shall have all the powers of the members, the stockholders, the directors, and the officers of the association and shall be authorized to operate the association in its own name or to conserve its assets in the manner and to the extent authorized by the Chairman. The Chairman shall appoint only the Federal Deposit Insurance Corporation as conservator or receiver for a savings association for the purpose of liquidation or winding up the affairs of a savings association, and said Corporation shall have power to buy at its own sale as conservator or receiver, subject to approval by the Chairman. The Chairman may, without any requirement of notice, hearing, or other action, replace a conservator with another conservator or with a receiver, but any such replacement shall not affect any right which the association may have to obtain judicial review of the original appointment, except that any removal under this paragraph (6) shall be removal of the conservator or receiver in office at the time of such removal.

"(H) DISCLOSURE REQUIREMENT FOR THOSE ACTING ON BEHALF OF CONSERVATOR.—A conservator shall require that any independent contractor, consultant, or counsel employed by the conservator in connection with the conservatorship of a savings association pursuant to this section shall fully disclose to all parties with which such contractor, consultant, or counsel is negotiating, any limitation on the authority of such contractor, consultant, or counsel to make legally binding representations on behalf of the conservator.

"(3) RULES AND REGULATIONS.—The Chairman shall have power to make rules and regulations for the reorganization, consolidation, liquidation, and dissolution of savings associations, for the merger of insured savings associations with insured savings associations, for savings associations in conservatorship and receivership, and for the conduct of conservatorships and receiverships. The Chairman may, by regulation or otherwise, provide for the exercise of functions by members, stockholders, directors, or officers of a savings association during conservatorship and receivership. Until the Federal Deposit Insurance Corporation exercises its authority under section 11(l) of the Federal Deposit Insurance Act, the authority conferred by this paragraph shall also apply to the Federal Deposit Insurance Corporation as conservator or receiver or to the institution with respect to which it was appointed.

"(4) REFUSAL TO COMPLY WITH CONSERVATOR'S DEMAND.—Whenever a conservator or receiver appointed by the Chairman demands possession of the property, business, and assets of any savings association, or of any part thereof, the refusal by any director, officer, employee, or agent of such association to comply with the demand shall be punishable by a fine of not more than $5,000 or imprisonment for not more than one year, or both.

"(5) DEFINITIONS.—(A) As used in this subsection, the term 'savings association' includes any former savings association that retains deposits insured by the Federal Deposit Insurance Corporation notwithstanding termination of its status as an institution insured by such corporation and any Federal savings bank that is a member of the Bank Insurance Fund, and any former Federal savings bank that retains deposits insured by the Federal Deposit Insurance Corporation notwithstanding termination of its status as an insured financial institution.

"(B) References in this subsection to savings account holders and to members of savings associations shall be deemed to be references to holders of withdrawable accounts in savings institutions over which the Chairman has any statutory power of examination or supervision as provided in this paragraph, and references therein to boards of directors of savings associations shall be deemed to be references to boards of directors or other governing boards of such associations.

"(6) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(A) COMPLIANCE PROCEDURES REQUIRED.—The Chairman shall prescribe regulations requiring savings associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(B) EXAMINATIONS OF SAVINGS ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(i) IN GENERAL.—Each examination of a savings association by the Chairman shall include a review of the procedures required to be established and maintained under subparagraph (A).

"(ii) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the association.

"(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the Chairman determines that a savings association—

"(i) has failed to establish and maintain the procedures described in subparagraph (A); or

"(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the Chairman, the Chairman shall issue an order in the manner prescribed in paragraph (2) or (3) requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.

"(e) CHARACTER AND RESPONSIBILITY.—No charter shall be granted except to persons of good character and responsibility, nor unless in the judgment of the Chairman a necessity exists for such an institution in the community to be served, nor unless there is a reasonable probability of its usefulness and success, nor unless the same can be established without undue injury to properly conducted existing local thrift and home-financing institutions.

"(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—Each Federal savings association, upon its incorporation, shall become automatically a member of the Federal Home Loan Bank of the district in which it is located, or if convenience shall require and the Chairman approve, shall become a member of a Federal Home Loan Bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.

"(g) PREFERRED SHARES.—[Repealed.]

"(h) TAXATION.—No State, county, municipal, or local taxing authority shall impose any tax on Federal savings associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

"(i) CONVERSIONS.—(1) Any institution which is, or is eligible to become, a member of a Federal home loan bank may convert itself into a Federal savings association or Federal savings bank under this Act (and in so doing may change directly from the mutual form to the stock form, or from the stock form to the mutual form), but such conversion shall be subject to such rules and regulations as the Chairman shall prescribe, and thereafter the converted Federal savings association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act.

"(2)(A) No savings association may convert from the mutual to the stock form, or from the stock form to the mutual form, except in accordance with the rules and regulations of the Chairman.

"(B) Any aggrieved person may obtain review of a final action of the Chairman which approves, with or without conditions, or disapproves a plan of conversion pursuant to this subsection only by complying with the provisions of subsection (d)(1)(A) of section 5 of this Act within the time limit and in the manner therein prescribed, which provisions shall apply in all respects as if such final action were an order the review of which is therein provided for, except that such time limit shall commence upon publication of notice of such final action in the Federal Register or upon the giving of such general notice of such final action as is required by or approved under regulations of the Chairman, whichever is later.

"(C) Any Federal savings association may change its designation from a Federal savings and loan association to a Federal savings bank, or the reverse.

"(3)(A) Any Federal savings association may convert itself into a savings and loan or savings bank type of institution organized pursuant to the laws of the State, district, commonwealth, or territory (hereinafter referred to in this section as the 'State') in which the principal office of such Federal savings association is located if—

"(i) the State permits the conversion of any savings and loan or savings bank type of institution of such State into a Federal savings association;

"(ii) such conversion of a Federal savings association into such a State institution is determined upon the vote in favor of such conversion cast in person or by proxy at a special meeting of members or stockholders called to consider such action, specified by the law of the State in which the home office of the Federal savings association is located, as required by such law for a State-chartered institution to convert itself into a Federal savings association, but in no event upon a vote of less than 51 percent of all the votes cast at such meeting, and upon compliance with other requirements reciprocally equivalent to the requirements of such State law for the conversion of a State-chartered institution into a Federal savings association;

"(iii) notice of the meeting to vote on conversion shall be given as herein provided and no other notice thereof shall be necessary; the notice shall expressly state that such meeting is called to vote thereon, as well as the time and place thereof, and such notice shall be mailed, postage prepaid, at least thirty and not more than sixty days prior to the date of the meeting, to each member or stockholder of record of the Federal savings association at his last address as shown on the books of the Federal savings association and the Office of its Chairman;

"(iv) in the event of dissolution of a mutual savings association after conversion, the members or shareholders of the savings association will share on a mutual basis in the assets of the association in exact proportion to their relative share or account credits;

"(v) in the event of dissolution of a stock savings association after conversion, the stockholders will share on a equitable basis in the assets of the association; and

"(vi) such conversion shall be effective upon the date that all the provisions of this Act shall have been fully complied with and upon the issuance of a new charter by the State wherein the savings association is located.

"(B)(i) The act of conversion constitutes consent by the institution to be bound by all the requirements that the Chairman may legally impose under this Act.

"(ii) The savings association shall upon conversion and thereafter be authorized to issue securities in any form currently approved at the time of issue by the Chairman for issuance by similar savings associations in such State.

"(iii) If the insurance of accounts is terminated in connection with such conversion, the notice and other action shall be taken as provided by law and regulations for the termination of insurance of accounts.

"(4)(A) To the extent authorized by the Chairman—

"(i) any Federal savings bank chartered as such prior to the enactment of this paragraph may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was permitted to do so as a Federal savings bank prior to such enactment; and

"(ii) any Federal savings bank organized prior to the enactment of the FIRRE Act formerly organized as a mutual savings bank under State law may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was authorized to do so as a mutual savings bank under State law.

"(B) The authority conferred by this paragraph may be utilized by any Federal savings association that acquires, by merger or consolidation, a Federal savings bank enjoying grandfathered rights hereunder.

"(j) SUBSCRIPTION FOR SHARES.—[Repealed.]

"(k) DEPOSITORY OF PUBLIC MONEY.—When designated for that purpose by the Secretary of the Treasury, any savings association or member of any Federal Home Loan Bank shall be a depositary of public money and may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. Any savings association or member of any Federal Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States, including services in connection with the collection of taxes and other obligations owed the United States, and the Secretary of the Treasury is hereby authorized to deposit public money in any such Federal savings association or member of a Federal home loan bank, and shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

"(l) RETIREMENT ACCOUNTS.—Any Federal savings association is authorized to act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) of the Internal Revenue Code of 1986 and to act as trustee or custodian of an individual retirement account within the meaning of section 408 of such Code if the funds of such trust or account are invested only in savings accounts or deposits in such Federal savings association or in obligations or securities issued by such Federal savings association. All funds held in such fiduciary capacity by any such Federal savings association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this paragraph.

"(m) BRANCHING.—No savings association incorporated under the laws of the District of Columbia or organized in such District or doing business in such District shall establish any branch or move its principal office or any branch without the prior written approval of the Chairman, and no other savings association shall establish any branch in such District or move its principal office or any branch in such District without such approval. As used in the sentence next preceding, 'branch' means any office, place of business, or facility, other than the principal office as defined by the Chairman, of a savings association at which accounts are opened or payments thereon are received or withdrawals therefrom are paid, or any other office, place of business, or facility of a savings association defined by the Chairman as a branch within the meaning of such sentence, and as used in such sentence and in this sentence 'savings association' means any incorporated or unincorporated building, building or loan, building and loan, savings and loan, or homestead association or cooperative bank.

"(n) TRUSTS.—(1) The Chairman is authorized and empowered to grant by special permit to a Federal savings association applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with Federal savings associations are permitted to act under the laws of the State in which the Federal savings association is located. Subject to the rules and regulations of the Chairman, service corporations may invest in State or federally-chartered corporations which are located in the State in which the home office of the Federal savings association is located and which are engaged in trust activities.

"(2) Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with Federal savings associations, the granting to and the exercise of such powers by Federal savings associations shall not be deemed to be in contravention of State or local law within the meaning of this section.

"(3) Federal savings associations exercising any or all of the powers enumerated in this section shall segregate all assets held in any fiduciary capacity from the general assets of the association and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this section. The State banking authority involved may have access to reports of examination made by the Chairman insofar as such reports relate to the trust department of such association but nothing in this section shall be construed as authorizing such State banking authority to examine the books, records, and assets of such associations.

"(4) No Federal savings association shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the association awaiting investment shall be carried in a separate account and shall not be used by the association in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Chairman.

"(5) In the event of the failure of a Federal savings association, the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the association.

"(6) Whenever the laws of a State require corporations acting in a fiduciary capacity to deposit securities with the State authorities for the protection of private or court trusts, Federal savings associations so acting shall be required to make similar deposits and securities so deposited shall be held for the protection of private or court trusts, as provided by the State law. Federal savings associations in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement. Federal savings associations shall have power to execute such bond when so required by the laws of the State involved.

"(7) In any case in which the laws of a State require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section, shall take an oath or make an affidavit, the president, vice president, cashier, or trust officer of such association may take the necessary oath or execute the necessary affidavit.

"(8) It shall be unlawful for any Federal savings association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than $50,000 or twice the amount of that person's gain from the loan, whichever is greater, or may be imprisoned not more than five years, or may be both fined and imprisoned, in the discretion of the court.

"(9) In passing upon applications for permission to exercise the powers enumerated in this section, the Chairman may take into consideration the amount of capital and surplus of the applying Federal savings association, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served, and any other facts and circumstances that seem to it proper, and may grant or refuse the application accordingly, except that no permit shall be issued to any association having a capital and surplus less than the capital and surplus required by State law of State banks, trust companies, and corporations exercising such powers.

"(10) SURRENDER OF CHARTER.—(A) Any Federal savings association desiring to surrender its right to exercise the powers granted under this section, in order to relieve itself of the necessity of complying with the requirements of this section, or to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, or for any other purpose, may file with the Chairman a certified copy of a resolution of its board of directors signifying such desire.

"(B) Upon receipt of such resolution, the Chairman, after satisfying itself that such Federal savings association has been relieved in accordance with State law of all duties as trustee, executor, administrator, guardian or other fiduciary, under court, private or other appointments previously accepted under authority of this section, may in its discretion, issue to such association a certificate certifying that such association is no longer authorized to exercise the powers granted by this section.

"(C) Upon the issuance of such a certificate by the Chairman, such Federal savings association (i) shall no longer be subject to the provisions of this section or the regulations of the Chairman made pursuant thereto, (ii) shall be entitled to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, and (iii) shall not exercise thereafter any of the powers granted by this section without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this section.

"(D) The Chairman is authorized and empowered to promulgate such regulations as it may deem necessary to enforce compliance with the provisions of this subsection and the proper exercise of the trust powers granted by this subsection.

"(11) Revocation.—(A) In addition to the authority conferred by other law, if, in the opinion of the Chairman, a Federal savings association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of 5 consecutive years to exercise, the powers granted by this section or otherwise fails or has failed to comply with the requirements of this subsection, the Chairman may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this subsection. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association.

"(B) Such hearing shall be conducted in accordance with the provisions of subsection (d)(7), and subject to judicial review as therein provided, and shall be fixed for a date not earlier than 30 days and not later than sixty days after service of such notice unless an earlier or later date is set by the Chairman at the request of any Federal savings association so served.

"(C) Unless the Federal savings association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent, or if upon the record made at any such hearing, the Chairman shall find that any allegation specified in the notice of charges has been established, the Chairman may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this subsection, except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

"(D) A revocation order shall become effective not earlier than the expiration of 30 days after service of such order upon the association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Chairman or a reviewing court.

"(o) Conversion of State Savings Banks.—(1) Notwithstanding any other provision of this section, the Chairman, subject to the provisions of this subsection, may authorize, under the rules and regulations of the Chairman, the conversion of a State-chartered savings bank that is a Bank Insurance Fund member into a Federal savings bank, if such conversion is not in contravention of State law, and provide for the organization, incorporation, operation, examination, and regulation of such institution.

"(2)(A) Any Federal savings bank chartered pursuant to this subsection shall continue to be a Bank Insurance Fund member until such time as it changes its status to a Savings Association Insurance Fund member.

"(B) The Chairman shall provide the Federal Deposit Insurance Corporation with notification of any application under this Act for conversion to a Federal charter by an institution insured by the Corporation, shall consult with the Corporation before disposing of the application, and shall provide said Corporation with notification of the Chairman's determination with respect to such application.

"(C) Notwithstanding subsection (i), any provision of the constitution or laws of any State, or paragraph (1) of this subsection, if the Federal Deposit Insurance Corporation determines conversion into a Federal stock savings bank or the chartering of a Federal stock savings bank is necessary to prevent the closing of a savings bank it insures or to reopen a closed savings bank it insured, or if the Federal Deposit Insurance Corporation determines, with the concurrence of the Chairman, that severe financial conditions exist that threaten the stability of a savings bank insured by such Corporation and that such a conversion or charter is likely to improve the financial condition of such savings bank, the Federal Deposit Insurance Corporation shall provide to the Chairman a certificate of such determination, the reasons therefor in conformance with the requirements of this Act, and the bank, without further action by the Chairman, shall be converted or chartered by the Chairman, pursuant to the rules and regulations thereof, from the time the Federal Deposit Insurance Corporation issues such certificate.

"(D) A bank may be converted under subparagraph (C) only where the board of trustees of the bank—

> "(i) has specified in writing that the bank is in danger of closing or is closed, or that severe financial conditions exist that threaten the stability of the bank and a conversion is likely to improve the financial condition of the bank; and
>
> "(ii) has requested in writing that the Corporation use the authority of subparagraph (C).

"(E)(i) Before making a determination under subparagraph (D), the Corporation shall consult the State bank supervisor of the State in which the bank in danger of closing is chartered. The State bank supervisor shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of subparagraph (D).

"(ii) If the State supervisor objects during such period, the Corporation may use the authority of subparagraph (D) only by a unanimous vote of the Board of Directors. The Board of Directors shall provide to the State supervisor, as soon as practicable, a written certification of its determination.

"(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations, and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this Act.

"(4) For purposes of the Bank Protection Act of 1968, the Home Mortgage Disclosure Act, the Community Reinvestment Act, the Depository Institution Management Interlocks Act, the Depository Institutions Deregulation Act of 1980, the Truth in Lending Act, the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act, the Electronic Fund Transfer Act, and section 12(i) of the Securities Exchange Act of 1934, a savings association shall be regarded as an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

"(p) CONVERSIONS.—(1) Notwithstanding any other provision of Federal law or the laws or constitution of any State, and consistent with the purposes of this Act, the Chairman may authorize (or in the case of a Federal savings association, require) the conversion of a mutual savings association or Federal mutual savings bank that is insured by the Federal Deposit Insurance Corporation into a Federal stock savings association or Federal stock savings bank, or charter a Federal stock savings association or Federal stock savings bank to acquire the assets of, or merge with such a mutual institution under the rules and regulations of the Chairman.

"(2) Authorizations under this subsection may be made only to assist an institution in receivership, or if the Chairman has determined that severe financial conditions exist which threaten the stability of an association and that such authorization is likely to improve the financial condition of the association, or when the Federal Deposit Insurance Corporation has contracted to provide assistance to such association under section 13 of the Federal Deposit Insurance Act.

"(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provisions of this Act, and may engage in any investment, activity, or operation that the institution it acquired was engaged in if that institution was a Federal savings bank, or would have been authorized to engage in had that institution converted to a Federal charter.

"(q) TYING ARRANGEMENTS.—(1) A savings association shall not in any manner extend credit, lease, or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

"(A) that the customer shall obtain additional credit, property, or service from such savings association, or from any service corporation or affiliate of such association, other than a loan, discount, deposit, or trust service;

"(B) that the customer provide additional credit, property, or service to such association, or to any service corporation or affiliate of such association, other than those related to and usually provided in connection with a similar loan, discount, deposit, or trust service; and

"(C) that the customer shall not obtain some other credit, property, or service from a competitor of such association, or from a competitor of any service corporation or affiliate of such association, other than a condition or requirement that such association shall reasonably impose in connection with credit transactions to assure the soundness of credit.

"(2)(A) Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of paragraph (1), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings.

"(B) Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

"(3) Any person who is injured in his business or property by reason of anything forbidden in paragraph (1) may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, or may sue therefor in any other court of competent jurisdiction, and shall be entitled to recover three times the amount of the damages sustained by him, and the cost of suit, including a reasonable attorney's fee. Any such suit shall be brought within four years from the date of the occurrence of the violation.

"(4) Nothing contained in this subsection shall be construed as affecting in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this subsection. No regulation or order issued by the Chairman under this subsection shall in any manner constitute a defense to such action.

"(5) For purposes of this subsection—

"(A) the term 'affiliate' of an association means any individual or company (including any corporation, partnership, trust, joint-stock company, or similar organization) which controls, is controlled by, or is under common control with such association; and

"(B) the term 'loan' includes obligations and extensions or advances of credit.

"(r) OUT OF STATE BRANCHES.—(1) No Federal savings association may establish, retain, or operate a branch outside the State in which the Federal savings association has its home office, unless the association qualifies as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 or meets the asset composition test imposed by subparagraph (c) of that section on institutions seeking so to qualify. No out-of-State branch so established shall be retained or operated unless the total assets of the Federal savings association attributable to all branches of the Federal savings association in that State would qualify the branches as a whole, were they otherwise eligible, for treatment as a domestic building and loan association under said section 7701(a)(19).

"(2) The limitations of paragraph (1) shall not apply if—

"(A) the branch results from a transaction authorized under section 13(k) of the Federal Deposit Insurance Act;

"(B) the branch was authorized for the Federal savings association prior to the enactment of the Garn-St Germain Depository Institutions Act of 1982;

"(C) the law of the State in which the branch is or is to be located would permit establishment of the branch were the Federal savings association an institution of the savings and loan or savings bank type chartered by the State in which its home office is located; or

"(D) the branch was operated lawfully as a branch under State law prior to the association's conversion to a Federal charter.

"(3) The Chairman, for good cause shown, may allow Federal savings associations up to two years to comply with the requirements of this subsection.

"(s) MINIMUM CAPITAL REQUIREMENTS.—

"(1) IN GENERAL.—Consistent with the purposes of section 908 of the International Lending Supervision Act of 1983 and the capital requirements established pursuant to such section by the appropriate Federal banking agencies (as defined in section 903(1) of such Act), the Chairman shall require all savings associations to achieve and maintain adequate capital by—

"(A) establishing minimum levels of capital for savings associations; and

"(B) using such other methods as the Chairman determines to be appropriate.

"(2) MINIMUM CAPITAL LEVELS MAY BE DETERMINED BY CHAIRMAN ON CASE-BY-CASE BASIS.—The Chairman may, consistent with subsection (t), establish the minimum level of capital for a savings association at such amount or at such ratio of capital-to-assets as the Chairman determines to be necessary or appropriate for such association in light of the particular circumstances of the association.

"(3) UNSAFE OR UNSOUND PRACTICE.—In the Chairman's discretion, the Chairman may treat the failure of any savings association to maintain capital at or above the minimum level required by the Chairman under this subsection as an unsafe or unsound practice within the meaning of subsection (d).

"(4) DIRECTIVE TO INCREASE CAPITAL.—

"(A) PLAN MAY BE REQUIRED.—In addition to any other action authorized by law, including paragraph (3), the Chairman may issue a directive requiring any savings association which fails to maintain capital at or above the minimum level required by the Chairman to submit and adhere to a plan for increasing capital which is acceptable to the Chairman.

"(B) ENFORCEMENT OF PLAN.—Any directive issued and plan approved under subparagraph (A) shall be enforceable under subsection (d)(2) or section 8 of the Federal Deposit Insurance Act to the same extent and in the same manner as an outstanding order which was issued under subsection (d)(2) or section 8 of the Federal Deposit Insurance Act and has become final.

"(5) PLAN TAKEN INTO ACCOUNT IN OTHER PROCEEDINGS.—The Chairman may—

"(A) consider a savings association's progress in adhering to any plan required under paragraph (4) whenever such association or any affiliate of such association (including any company which controls such association) seeks the approval of the Chairman for any proposal which would have the effect of diverting earnings, diminishing capital, or otherwise impeding such association's progress in meeting the minimum level of capital required by the Chairman; and

"(B) disapprove any proposal referred to in subparagraph (A) if the Chairman determines that the proposal would adversely affect the ability of the association to comply with such plan.

"(t) CAPITAL STANDARDS.—

"(1) IN GENERAL.—

"(A) Not later than 90 days after enactment of the FIRRE Act, the Chairman shall by regulation establish uniformly applicable capital standards for savings associations not less stringent than standards applicable to national banks, except as provided in paragraph (2). Such standards shall require a savings association to meet both the leverage ratio and the risk-based capital standards. The Chairman may provide for deviation in the risk-based standard to reflect interest rate or other risks, but any deviation from such standard shall not, when, taken as a whole, result in a materially lower risk-based capital standard than that which applies to national banks. The leverage ratio that applies to savings associations shall not be less stringent than the leverage ratio that applies to national banks; and in no event shall be less than 3 percent of total assets.

"(B) If the appropriate Federal banking agency for national banks ceases to have risk-based capital standards applicable to national banks, the Chairman shall establish by regulation uniformly applicable capital standards for savings associations that, taken as a whole, shall not be less stringent than the capital standards then applicable to national banks.

"(2) GOODWILL.—(A) The calculation of capital for either the leverage ratio or the risk-based capital standard shall include goodwill—

"(i) limited to goodwill existing on April 12, 1989, to be amortized on a straightline basis over the shorter of—

"(I) a 25-year period, or

"(II) the remaining period for amortization in effect as of April 12, 1989, or

"(ii) limited to goodwill resulting from the acquisition of a savings association or savings association holding company for which the application under section 408(e) of the National Housing Act (as then in effect) was filed on or prior to March 12, 1989, to be amortized on a straightline basis over—

"(I) a 10-year period, or

"(II) such shorter period as may be determined by the Chairman with the concurrence of the Secretary of the Treasury.

"(B) Notwithstanding subparagraph (A), a savings association shall maintain tangible capital (excluding goodwill) equal to 1.5 percent of the association's total assets.

"(3) SEPARATE CAPITALIZATION REQUIRED FOR CERTAIN SUBSIDIARIES.—

"(A) IN GENERAL.—For purposes of paragraph (1) the savings association's entire investment in, and loans to, any subsidiary engaged as principal in activities not permissible for a national bank shall be deducted from the capital of the savings association.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

"(i) investments in and loans to a subsidiary that is engaged solely in mortgage banking activities;

"(ii) investments in and loans to a subsidiary—

"(I) that is itself a savings association or a company the sole investment of which is a savings association, and

"(II) that was acquired by the parent savings association prior to April 12, 1989;

"(iii) corporate debt securities that are not of investment grade; or

"(iv) any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or to a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.

"(C) TRANSITIONAL RULE.—

"(i) Notwithstanding subparagraph (A), if a savings associations's subsidiary was, as of April 12, 1989, engaged as principal in activities not permissible for a national bank, the savings association may, except as provided in clause (iii), include in its capital the applicable percentage of the lesser of—

"(I) the savings association's investments in and loans to the subsidiary on April 12, 1989; or

"(II) the savings association's investments in and loans to the subsidiary on the date as of which the savings association's capital is being determined.

"(ii) For purposes of clause (i), the applicable percentage is as follows:

"For the following period:	The applicable percentage is:
Prior to July 1, 1990	100 percent
July 1, 1990–June 30, 1991	90 percent
July 1, 1991–June 30, 1992	75 percent
July 1, 1992–June 30, 1993	60 percent
July 1, 1993–June 30, 1994	40 percent.

"(iii) For purposes of clause (i), the Federal Deposit Insurance Corporation may prescribe by order, with respect to a particular savings association, an applicable percentage less than that provided in clause (ii) if the Corporation determines, in its sole discretion, that the use of a greater percentage would, under the circumstances, constitute an unsafe or unsound practice or be likely to result in the institution's being in an unsafe or unsound condition.

"(4) SCHEDULE.—The Chairman shall prescribe a timetable for the implementation of capital standards under paragraph (1) that requires their full implementation not later than June 1, 1991.

"(5) RESTRICTION ON GROWTH.—

"(A) PRIOR TO 1991.—Until June 1, 1991, the Chairman—

"(i) shall require any savings association not in compliance with capital standards under this subsection to submit a revised plan under subsection (s)(4)(A) which—

"(I) provides, among other things, for asset growth fully supported by tangible capital in the amount required under the then applicable capital standard;

"(II) sets forth the types and levels of activities that the association will engage in to raise capital; and

"(III) is acceptable to the Chairman, and

"(ii) may restrict the asset growth of any savings association not in compliance with capital standards established pursuant to this subsection.

"(B) ON AND AFTER JUNE 1, 1991.—On and after June 1, 1991, the Chairman shall—

"(i) prohibit the asset growth of any savings association or class of savings associations not in compliance with capital standards established pursuant to this subsection to not more than the extent of interest credited on deposits;

"(ii) limit such asset growth to increases in assets described in section 10(m)(5)(B) and consumer loans; and

"(iii) require that all such asset growth be fully supported by tangible capital at 6 percent (or, in the Chairman's discretion, at such lower rate as may be provided for under the standard in effect at such time under paragraph (1)).

"(C) SPECIAL RESTRICTIONS FOR ASSOCIATION'S USE OF GOODWILL.—In the case of a savings association that complies with the capital standards established under this subsection only by including goodwill as provided by paragraph (2), the Chairman shall require that—

"(i) prior to June 1, 1991, such association's asset growth be fully supported by tangible capital in the amount required under the then applicable capital standard; and "(ii) on and after June 1, 1991, such association's asset growth be fully supported by tangible capital at 6 percent (or, in the Chairman's discretion, at such lower rate as may be provided for under the standard in effect at such time under paragraph (1)).

"(D) GENERAL RESTRICTIONS.—The Chairman may restrict the asset growth of any savings association that the Chairman determines is taking excessive risks or is paying excessive rates for deposits.

"(6) USE OF OTHER DEFINITIONS.—The standards established under the subsection shall include all relevant substantive definitions established by the appropriate Federal banking agency for national banks.

"(7) DEFINITION.—For purposes of this subsection, the term 'national bank' shall have the same meaning as it has in section 3(d) of the Federal Deposit Insurance Act.

"(u) LIMITS ON LOANS TO ONE BORROWER.—

"(1) IN GENERAL.—The limitations contained in section 5200 of the Revised Statutes (12 U.S.C. 84) applies to savings associations in the same manner and to the same extent as they apply to national banks.

"(2) EXCEPTIONS.—A savings association may make loans to one borrower not to exceed—

"(A) 50 percent of its paid in capital and surplus in the case of a loan made to finance the sale of real property held by the financial institution after foreclosure, or

"(B) $500,000,

whichever is greater.

"(v) REPORTS OF CONDITION.—

"(1) IN GENERAL.—Each association shall make reports of conditions to the Chairman which shall be in a form prescribed by the Chairman and shall contain—

"(A) information sufficient to allow the identification of potential interest rate and credit risk;

"(B) a description of any assistance being received by the association, including the type and monetary value of such assistance;

"(C) the identity of all subsidiaries and affiliates of the association;

"(D) the identity, value, type, and sector of investment of all equity investments of the associations and subsidiaries; and

"(E) other information that the Chairman may prescribe.

"(2) AVAILABILITY.—Reports required under this subsection and all information contained therein shall be available to the public upon request, unless the Chairman determines that a particular item or classification of information should not be made public in order to protect the safety or soundness of the institution concerned or institutions concerned, the Savings Association Insurance Fund, or that public disclosure would not otherwise be in the public interest. A determination made by the Chairman not to permit the public disclosure of information must be made in writing, and if the Chairman chooses to restrict any item of information for all savings institutions he should disclose the reason in detail in the Federal Register. The Chairman's decision under this paragraph shall not be subject to judicial review.

"(3) ACCESS BY CERTAIN PARTIES.—Notwithstanding paragraph (2), the Chairman and ranking minority member of the House and Senate Banking Committee may not be denied access to any information contained in a condition of report, subject to reasonable confidentiality requirements which may be imposed upon their further dissemination. These confidentiality requirements may not prevent the forwarding of such information to the General Accounting Office for purposes of analysis.

"SEC. 6. ENCOURAGEMENT OF SAVING AND HOME FINANCING.

"[Repealed.]

"SEC. 7. APPLICABILITY.

"The provisions of this Act shall apply to the continental United States (including Alaska), to the State of Hawaii, and to Puerto Rico, Guam, and the Virgin Islands.

"SEC. 8. DISTRICT ASSOCIATIONS.

"(a) IN GENERAL.—Without regard to any provision of law other than this section, and without limitation on any other power or function now or hereafter vested in or exercisable by the Chairman by or under this Act or otherwise, the Chairman shall, with respect to all incorporated or unincorporated building, building or loan, building and loan, or homestead associations, and similar institutions, of or transacting or doing business in the District of Columbia, or maintaining any office in the District of Columbia (other than Federal savings and loan associations), have the same powers and functions as to examination, operation, and regulation as are now or hereafter vested in or exercisable by it with respect to Federal savings and loan associations by or under section 5 of this Act or otherwise, and all of the provisions of subsection (d) of section 5 of this Act as now or hereafter in force shall be applicable with respect to such associations or institutions.

"(b) ADDITIONAL POWERS.—Any such association or institution incorporated under the laws of, or organized in, the District of Columbia shall have in addition to any existing statutory authority such statutory authority as is from time to time vested in Federal savings and loan associations.

"(c) CHARTER AMENDMENTS.—Charters, certificates of incorporation, articles of incorporation, constitutions, bylaws, or other organic documents of associations or institutions referred to in subsection (b) of this section may, without regard to anything contained therein or otherwise, hereafter be amended in such manner and to such extent and upon such vote or votes if any as the Chairman may by regulation or otherwise provide.

"(d) LIMITATION.—Nothing herein shall cause, or permit the Chairman to cause, District of Columbia associations to be or become Federal savings and loan associations, or require the Chairman to impose on District of Columbia associations the same regulations as are imposed on Federal savings and loan associations.

"SEC. 9. EXPENSES OF EXAMINATIONS OF SAVINGS ASSOCIATIONS; AFFILIATES; SAVINGS ASSOCIATION HOLDING COMPANIES AND THEIR SUBSIDIARIES; EXPENSES OF PROCESSING APPLICATIONS; EXPENSES OF GENERAL OPERATIONS OF THE OFFICE OF THE CHAIRMAN; ASSESSMENT OF FEES.

"(a) IN GENERAL.—A fee adequate to cover the cost of examinations of savings associations provided for by this Act may be assessed by the Chairman upon savings associations.

"(b) INSTITUTION ASSESSED.—A fee adequate to cover the cost of examinations of affiliates of savings associations, savings association holding companies and subsidiaries of savings association holding companies provided for by section 5(d)(1)(B)(i) and section 10(b)(4) of this Act may be assessed against the affiliate, savings association holding company, or subsidiary of a savings association holding company by the Chairman and paid for by such entity.

"(c) FAILURE OF AFFILIATE TO PAY.—If any affiliate of a savings association, savings association holding company, or subsidiary of a savings association holding company shall refuse to pay such expense, or other expense imposed pursuant to this section, or shall fail to do so within 60 days after the date of such assessment, then such expenses may be assessed against the affiliated savings association and when so assessed, shall be paid by such association. If the affiliation is with 2 or more savings associations or affiliates, such expenses may be assessed against, and collected from, any or all of such savings associations in such proportions as the Chairman prescribe.

"(d) REFUSAL TO PERMIT EXAMINATION.—If any affiliate of a savings association, savings association holding company, or subsidiary of a savings association holding company shall refuse to permit an examiner to make an examination of the affiliate or shall refuse to give any information required in the course of any examination, the savings association with which it is affiliated shall be subject to a penalty of not more than $25,000 for each day that any such refusal shall continue. Notwithstanding the foregoing, for violations made with reckless disregard for the safety and soundness of the financial institution, the Chairman may, in his or her discretion, assess a penalty of not more than $1,000,000 per day for each day during which such violation continues. Such penalty may be assessed by the Chairman, and collected for the use of the Chairman and deposited in the same manner as expenses of examinations.

"(e) PROCESSING FEE.—The Chairman may, in his sole discretion, assess against any person, corporation, savings association or other entity, without limitation, that submits to the Chairman or his designee an application, filing, notice, or request for approval by the Chairman or his designee a fee adequate to cover the cost of processing such submission.

"(f) FEES FOR EXAMINATIONS AND SUPERVISORY ACTIVITIES.—The Chairman may assess against institutions for which the Chairman of the Federal Home Loan Bank System is the appropriate Federal banking agency, within the meaning of section 3 of the Federal Deposit Insurance Act, fees to fund the direct and indirect expenses of the Office of the Chairman. Such fees shall be imposed in proportion of the assets or resources of the institutions subject to such fees. The fees may be imposed more frequently than annually at the discretion of the Chairman. The annual rate of such fees shall be the same for all institutions subject to such fees.

"(g) WORKING CAPITAL.—The Chairman is authorized to impose fees and assessments pursuant to subsections (a), (b), (e), and (f) of this section, in excess of actual expenses for any given year to permit the Chairman to maintain a working capital fund. The Chairman shall remit to the payors of such fees and assessments any funds collected in excess of what he deems necessary to maintain such working capital fund.

"(h) USE OF FUNDS.—The Chairman is authorized to use the combined resources retained through fees and assessments imposed pursuant to this section to pay all direct and indirect salary and other expenses of the Office of the Chairman and the direct and indirect expenses of the examinations and supervisory activities of the Office of Savings Associations.

"(i) REGULATIONS.—The Chairman is authorized and empowered to prescribe regulations governing the imposition, calculation, collection and all other matters pertaining to the fees and assessments imposed pursuant to this section. Such regulations may establish formulas to determine a fee or schedule of fees to cover the costs of examinations and also to cover the cost of processing applications, filings, notices, and requests for approvals by the Chairman or his designee.

"SEC. 10. REGULATION OF HOLDING COMPANIES.

"(a) DEFINITIONS.—

"(1) IN GENERAL.—As used in this section, unless the context otherwise requires—

"(A) 'savings association' means a Federal savings and loan association or a Federal savings bank, a building and loan, savings and loan or homestead association, a cooperative bank or a State savings bank that is a member of the SAIF the deposits of which are insured by the FDIC, and shall include a savings bank which is deemed by the Chairman to be a savings association under subsection (l).

"(B) 'uninsured institution' means any financial institution the deposits of which are not insured by the Federal Deposit Insurance Corporation;

"(C) 'company' means any corporation, partnership, trust, joint-stock company, or similar organization, but does not include the Federal Savings and Loan Insurance Corporation, any Federal home loan bank, or any company the majority of the shares of which is owned by the United States or any State, or by an officer of the United States or any State in his official capacity, or by an instrumentality of the United States or any State;

"(D) 'savings and loan holding company' means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company by virtue of this subsection;

"(E) 'multiple savings and loan holding company' means any savings and loan holding company which directly or indirectly controls two or more savings associations;

"(F) 'diversified savings and loan holding company' means any savings and loan holding company whose subsidiary savings association and related activities as permitted under paragraph (2) of subsection (c) of this section represented, on either an actual or a pro forma basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year (or, during the first year's operation of the section, at such time as the holding company so qualifies), as determined in accordance with regulations issued by the Corporation;

"(G) 'person' means an individual or company;

"(H) 'subsidiary' of a person means any company which is controlled by such person, or by a company which is a subsidiary of such person by virtue of this subsection;

"(I) 'affiliate' of a specified savings association means any person or company which controls, is controlled by, or is under common control with, such savings association;

"(J) 'State' includes the District of Columbia and the Commonwealth of Puerto Rico;

"(K) the terms 'bank holding company' and 'bank' have the meanings given to such terms in subsections (a) and (c), respectively, of section 2 of the Bank Holding Company Act of 1956;

"(L) the term 'acquire' has the meaning given to such term in section 13(f)(8)(E) of the Federal Deposit Insurance Act; and

"(M) the term 'Chairman' means the Chairman of the Office of Savings Associations.

"(2) CONTROL.—For purposes of this section, a person shall be deemed to have control of—

"(A) a savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

"(B) any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

"(C) a trust if the person is a trustee thereof; or

"(D) a savings association or any other company if the Chairman determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company.

"(3) EXCLUSIONS.—Notwithstanding any other provision of this subsection, the term 'savings and loan holding company' does not include—

"(A) any company by virtue of its ownership or control of voting shares of a savings association or a savings and loan holding company acquired in connection with the underwriting of securities if such shares are held only for such period of time (not exceeding 120 days unless extended by the Chairman) as will permit the sale thereof on a reasonable basis; and

"(B) any trust (other than a pension, profit-sharing, shareholders', voting, or business trust) which controls a savings association or a savings and loan holding company if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and is (i) in existence on June 26, 1967, or (ii) a testamentary trust created on or after June 26, 1967.

"(b) REGISTRATION AND EXAMINATION.—(1) Within 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Chairman on forms prescribed by the Chairman, which shall include such information, under oath or otherwise, with respect to the financial condition, ownership, operations, management, and intercompany relationships of such holding company and its subsidiaries, and related matters, as the Chairman may deem necessary or appropriate to carry out the purposes of this section. Upon application, the Chairman may extend the time within which a savings and loan holding company shall register and file the requisite information.

"(2) Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the Chairman, and the regional office of the Chairman of the district in which its principal office is located, such reports as may be required by the Chairman. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the Chairman may prescribe. Each report shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Chairman may require.

"(3) Each savings and loan holding company shall maintain such books and records as may be prescribed by the Chairman.

"(4) Each savings and loan holding company and each subsidiary thereof shall be subject to such examinations as the Chairman may prescribe. The cost of such examinations shall be assessed against and paid by such holding company. Examination and other reports may be furnished by the Chairman to the appropriate State supervisory authority. The Chairman shall, to the extent deemed feasible, use for the purposes of this subsection reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority.

"(5) The Chairman shall have power to require any savings and loan holding company, or persons connected therewith if it is not a corporation, to execute and file a prescribed form of irrevocable appointment of agent for service of process.

"(6) The Chairman may at any time, upon its own motion or upon application, release a registered savings and loan holding company from any registration theretofore made by such company, if the Chairman shall determine that such company no longer has control of any savings association.

"(c) HOLDING COMPANY ACTIVITIES.—

"(1) PROHIBITED ACTIVITIES.—Except as otherwise provided in this subsection, no savings and loan holding company and no subsidiary (of such company) which is not a savings association shall—

"(A) engage in any activity or render any service for or on behalf of a savings association subsidiary for the purpose or with the effect of evading any law or regulation applicable to such savings association;

"(B) commence any business activity, other than the activities described in paragraph (2), after the date of the enactment of the Competitive Equality Amendments of 1987; or

"(C) continue any business activity, other than the activities described in paragraph (2), after the end of the 2-year period beginning on the later of—

"(i) the date of the enactment of the Competitive Equality Amendments of 1987; or

"(ii) the date on which such company received approval under subsection (e) of this section to become a savings and loan holding company subject to the limitations contained in this subparagraph.

"(2) EXEMPT ACTIVITIES.—The prohibitions of subparagraphs (B) and (C) of paragraph (1) shall not apply to the following business activities of any savings and loan holding company or any subsidiary (of such company) which is not a savings association:

"(A) Furnishing or performing management services for a savings association subsidiary of such company.

"(B) Conducting an insurance agency or escrow business.

"(C) Holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company.

"(D) Holding or managing properties used or occupied by a savings association subsidiary of such company.

"(E) Acting as trustee under deed of trust.

"(F) Any other activity—

"(i) which the Board of Governors of the Federal Reserve System, by regulation, has determined to be permissible for bank holding companies under section 4(c) of the Bank Holding Company Act of 1956, unless the Chairman, by regulation, prohibits or limits any such activity for savings and loan holding companies; or

"(ii) in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.

"(3) CERTAIN LIMITATIONS ON ACTIVITIES NOT APPLICABLE TO CERTAIN HOLDING COMPANIES.—Notwithstanding paragraphs (4) and (6) of this subsection, the limitations contained in subparagraphs (B) and (C) of paragraph (1) shall not apply to any savings and loan holding company (or any subsidiary of such company) which controls—

"(A) only 1 savings association, if the savings association subsidiary of such company is a qualified thrift lender (as determined under subsection (m)); or

"(B) more than 1 savings association, if—

"(i) all, or all but 1, of the savings association subsidiaries of such company were acquired pursuant to an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act; and

"(ii) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under subsection (m)).

"(4) PRIOR APPROVAL OF CERTAIN NEW ACTIVITIES REQUIRED.—

"(A) IN GENERAL.—No savings and loan holding company and no subsidiary (of such company) which is not a savings association shall commence, either de novo or by an acquisition (in whole or in part) of a going concern, any activity described in paragraph (2)(F)(i) of this subsection without the prior approval of the Chairman.

"(B) FACTORS TO BE CONSIDERED BY CHAIRMAN.—In considering any application under subparagraph (A) by any savings and loan holding company or any subsidiary of any such company which is not a savings association, the Chairman shall consider—

"(i) whether the performance of the activity described in such application by the company or the subsidiary can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects of such activity (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices);

"(ii) the managerial resources of the companies involved; and

"(iii) the adequacy of the financial resources, including capital, of the companies involved.

"(C) CHAIRMAN MAY DIFFERENTIATE BETWEEN NEW AND ONGOING ACTIVITIES.—In prescribing any regulation or considering any application under this paragraph, the Chairman may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern.

"(D) APPROVAL OR DISAPPROVAL BY ORDER.—The approval or disapproval of any application under this paragraph by the Chairman shall be made in an order issued by the Chairman containing the reasons for such approval or disapproval.

"(5) GRACE PERIOD TO ACHIEVE COMPLIANCE.—If any savings association referred to in paragraph (3) fails to maintain the status of such association as a qualified thrift lender, the Chairman may allow, for good cause shown, any company which controls such association (or any subsidiary of such company which is not a savings association) up to 3 years to comply with the limitations contained in paragraph (1)(C).

"(6) SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES AFFECTED BY 1987 AMENDMENTS.—

"(A) EXCEPTION TO 2-YEAR GRACE PERIOD FOR ACHIEVING COMPLIANCE.—Notwithstanding paragraph (1)(C)(i), any company which received approval under subsection (e) of this section to acquire control of a savings association between March 5, 1987, and the date of the enactment of the Competitive Equality Amendments of 1987 shall not continue any business activity other than the activities described in paragraph (2) after such date of enactment.

"(B) EXEMPTION FOR ACTIVITIES LAWFULLY ENGAGED IN BEFORE MARCH 5, 1987.—Notwithstanding paragraph (1)(C) and subject to subparagraphs (C) and (D), any savings and loan holding company which received approval, before March 5, 1987, under subsection (e) of this section to acquire control of a savings association may engage, directly or through any subsidiary (other than a savings association subsidiary of such company), in any activity in which such company or such subsidiary was lawfully engaged on such date.

"(C) TERMINATION OF SUBPARAGRAPH (B) EXEMPTION.—The exemption provided under subparagraph (B) for activities engaged in by any savings and loan holding company or a subsidiary of such company (which is not a savings association) which would otherwise be prohibited under paragraph (1)(C) shall terminate with respect to such activities of such company or subsidiary upon the occurrence (after the date of the enactment of the Competitive Equality Amendments of 1987) of any of the following:

"(i) The savings and loan holding company acquires control of a bank or an additional savings association (other than a savings association acquired pursuant to subsection (m) of this section or section 406(f)).

"(ii) Any savings association subsidiary of the savings and loan holding company fails to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986.

"(iii) The savings and loan holding company engages in any business activity—

"(I) which is not described in paragraph (2); and

"(II) in which it was not engaged on March 5, 1987.

"(iv) Any savings association subsidiary of the savings and loan holding company increases the number of locations from which such savings association conducts business after March 5, 1987 (other than an increase which occurs in connection with a transaction under section 13(c) or (k) of the Federal Deposit Insurance Act.

"(v) Any savings association subsidiary of the savings and loan holding company permits any overdraft (including an intraday overdraft), or incurs any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft is the result of an inadvertent computer or accounting error that is beyond the control of both the savings association subsidiary and the affiliate.

"(D) ORDER BY CHAIRMAN TO TERMINATE SUBPARAGRAPH (B) ACTIVITY.—Any activity described in subparagraph (B) may also be terminated by the Chairman, after opportunity for hearing, if the Chairman determines, having due regard for the purposes of this title, that such action is necessary to prevent conflicts of interest or unsound practices or is in the public interest.

"(7) FOREIGN SAVINGS AND LOAN HOLDING COMPANY.—Notwithstanding any other provision of this section, any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof which is not a savings association), which controls a single savings association on the date of enactment of the Competitive Equality Amendments of 1987 shall not be subject to this subsection with respect to any activities of such holding company which are conducted exclusively in a foreign country.

"(8) EXEMPTION FOR BANK HOLDING COMPANIES.—Except for paragraph (1)(A), this subsection shall not apply to a bank holding company registered with the Board of Governors of the Federal Reserve System and regulated pursuant to the Bank Holding Company Act of 1956, or any of its subsidiaries.

"(d) TRANSACTIONS WITH AFFILIATES.—Transactions between any subsidiary savings associations of a savings and loan holding company and any affiliate (of such savings association subsidiary) shall be subject to the limitations and prohibitions specified in section 11 of this Act.

"(e) ACQUISITIONS.—(1) It shall be unlawful for—

"(A) any savings and loan holding company directly or indirectly, or through one or more subsidiaries or through one or more transactions—

"(i) to acquire, except with the prior written approval of the Chairman, the control of a savings association or a savings and loan holding company, or to retain the control of such an association or holding company acquired or retained in violation of this section as heretofore or hereafter in effect;

"(ii) to acquire, except with the prior written approval of the Chairman, by the process of merger, consolidation, or purchase of assets, another savings association or a savings and loan holding company, or all or substantially all of the assets of any such association or holding company;

"(iii) to acquire by purchase or otherwise, or to retain for more than one year after the enactment of this amendment, any of the voting shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary, or, in the case of a multiple savings and loan holding company, to so acquire or retain more than 5 percent of the voting shares of any company not a subsidiary which is engaged in any business activity other than those specified in paragraph (2) of subsection (c) of this section; or

"(iv) to acquire the control of a savings association, or to retain for more than one year after the effective date of this amendment or from the date on which such control was acquired, whichever is later, except that the Chairman may upon application by such company extend such one-year period from year to year, for an additional period not exceeding 3 years, if the Chairman finds such extension is warranted and shall not be detrimental to the public interest;

"(B) any other company, without the prior written approval of the Chairman, directly or indirectly, or through one or more subsidiaries or through one or more transactions, to acquire the control of one or more savings associations, except that such approval shall not be required in connection with the control of a savings association, (i) acquired by devise under the terms of a will creating a trust which is excluded from the definition of 'savings and loan holding company' under subsection (a) of this section, or (ii) acquired in connection with a reorganization in which a person or group of persons, having had control of a savings association for more than 3 years, vests control of that association in a newly formed holding company subject to the control of the same person or group of persons. The Chairman shall approve an acquisition of a savings association under this subparagraph unless it finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the association or the insurance risk of the Savings Association Insurance Fund or Bank Insurance Fund, and shall render its decision within 90 days after submission to the Board of the complete record on the application.

"(2) The Chairman shall not approve any acquisition under subparagraphs (A)(i) or (A)(ii), or of more than one savings association under subparagraph (B), or paragraph (1) of this subsection, or any transaction under section 13(k) of the Federal Deposit Insurance Act, except in accordance with this paragraph. In every case, the Chairman shall take into consideration the financial and managerial resources and future prospects of the company and association involved, and the convenience and needs of the community to be served, and shall render its decision within 90 days after submission to the Board of the complete record on the application. Before approving any such acquisition, except a transaction under section 13(k) of the Federal Deposit Insurance Act, the Chairman shall request from the Attorney General and consider any report rendered within 30 days on the competitive factors involved. The Chairman shall not approve any proposed acquisition—

"(A) which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States, or

"(B) the effect of which in any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served.

"(3) INTERSTATE ACQUISITIONS.—No acquisition shall be approved by the Chairman under this subsection which will result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling savings associations in more than one State, unless—

"(A) such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional State or States pursuant to section 13(k) of the Federal Deposit Insurance Act;

"(B) such company controls a savings association subsidiary which operated a home or branch office in the additional State or States as of March 5, 1987; or

"(C) the statute laws of the State in which the savings association, control of which is to be acquired, is located are such that a savings association chartered by such State could be acquired by a savings association chartered by the State where the acquiring savings association or savings and loan holding company is located (or by a holding company that controls such a State chartered savings association), and such statute laws specifically authorize such an acquisition by language to that effect and not merely by implication.

"(4) The provisions of this subsection and of subsection (c)(2) of this section shall not apply to any savings and loan holding company which acquired the control of a savings association or of a savings and loan holding company pursuant to a pledge or hypothecation to secure a loan, or in connection with the liquidation of a loan, made in the ordinary course of business, but it shall be unlawful for any such company to retain such control for more than one year after the enactment of this amendment or from the date on which such control was acquired, whichever is later, except that the Chairman may upon application by such company extend such one-year period from year to year, for an additional period not exceeding 3 years, if the Chairman finds such extension is warranted and would not be detrimental to the public interest.

"(f) DECLARATION OF DIVIDEND.—Every subsidiary savings association of a savings and loan holding company shall give the Chairman not less than 30 days' advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Such notice period shall commence to run from the date of receipt of such notice by the Chairman. Any such dividend declared with such period, or without the giving of such notice to the Chairman, shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

"(g) ADMINISTRATION AND ENFORCEMENT.—(1) The Chairman is authorized to issue such rules, regulations, and orders as it deems necessary or appropriate to enable it to administer and carry out the purposes of this section, and to require compliance therewith and prevent evasions thereof.

"(2) The Chairman may make such investigations as it deems necessary or appropriate to determine whether the provisions of this section, and rules, regulations, and orders thereunder, are being and have been complied with by savings and loan holding companies and subsidiaries and affiliates thereof. For the purpose of any investigation under this section, the Chairman or its designated representatives shall have power to administer oaths and affirmations, to issue subpoenas and subpoenas duces tecum, to take evidence, and to require the production of any books, papers, correspondence, memorandums, or other records which may be relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in any State or in any territory. The Chairman may apply to the United States district court for the judicial district or the United States court in any territory in which any witness or company subpoenaed resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith.

"(3)(A) In the course of or in connection with any proceeding under subsection (a)(2)(D) or under paragraph (5) of this section, the Chairman or its designated representatives, including any person designated to conduct any hearing under said subsection, shall have power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum; and the Chairman is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this paragraph may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to such proceedings may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

"(B) Any hearing provided for in subsection (a)(2)(D) or under paragraph (5) of this section shall be held in the Federal judicial district or in the territory in which the principal office of the association or other company is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code.

"(4) Whenever it shall appear to the Chairman that any person is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this section or of any rule, regulation, or order thereunder, the Chairman may in his or her discretion bring an action in the proper United States district court, or the United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, to enforce compliance with this section or any rule, regulation, or order thereunder, or to require the divestiture of any acquisition in violation of this section, or for any combination of the foregoing, and such courts shall have jurisdiction of such actions, and upon a proper showing an injunction, decree, restraining order, order of divestiture, or other appropriate order shall be granted without bond.

"(5)(A) Notwithstanding any other provision of this section, the Chairman may, whenever it has reasonable cause to believe that the continuation by a savings and loan holding company of any activity or of ownership or control of any of its noninsured subsidiaries constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary savings association and is inconsistent with the sound operation of a savings association or with the purposes of this section or the Financial Institutions Supervisory Act, order the savings and loan holding company or any of its subsidiaries, after due notice and opportunity for hearing, to terminate such activities or to terminate (within 120 days or such longer period as the Chairman directs in unusual circumstances) its ownership or control of any such noninsured subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the savings and loan holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing savings and loan holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

"(B) The Chairman may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in subsection (j), no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

"(6) All expenses of the Chairman under this section shall be considered as nonadministrative expenses.

"(h) Prohibited Acts.—It shall be unlawful for—

"(1) any savings and loan holding company or subsidiary thereof, or any director, officer, employee, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares, of such holding company or subsidiary, to hold, solicit, or exercise any proxies in respect of any voting rights in a savings association which is a mutual association;

"(2) any director or officer of a savings and loan holding company, or any person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares of such holding company to acquire control, or to retain control for more than 2 years after the enactment of this subsection, of any savings association not a subsidiary of such holding company; or

"(3) any individual, except with the prior approval of the Chairman, to serve or act as a director, officer, or trustee of, or become a partner in, any savings and loan holding company after having been convicted of any criminal offense involving dishonesty or breach of trust.

"(i) PENALTIES.—(1) Any company which willfully violates any provisions of this section, or any regulation or order issued by the Chairman pursuant thereto shall be subject to a fine of not more than $1,000,000 for each day during which such violation continues. Any individual who with reckless disregard for the safety or soundness of the financial institution participates in a violation of any provision of this section or any rule, regulation or order thereunder, shall be subject to a fine of not more than $1,000,000 for each day during which such violation continues or shall be imprisoned for not more than 5 years, or both.

"(2) Any company which or individual who willfully participates in a violation of any provision of this section, or any regulation or order issued pursuant thereto, shall pay a civil penalty of not more than $1,000,000 per day for each day during which such violation continues and for all other violations, shall pay a civil penalty of not more than $25,000 per day for each day during which such violation continues. Civil and criminal penalties under this section are cumulative.

"(3) The jurisdiction and authority of the appropriate Federal banking agency to proceed under this subsection against any institution-related party shall not be affected by the resignation, termination of employment, or other separation of such person from an insured financial institution, including separation caused by the failure of the institution. The preceding sentence shall also apply to all matters which are pending as of the time of this amendment, whether or not formally commenced, so long as the individual was an institution-related party at the time the alleged transactions occurred.

"(4) Every director, officer, partner, trustee, agent, or employee of a savings and loan holding company shall be subject to the same penalties for false entries in any book, report, or statement of such savings and loan holding company as are applicable to officers, agents, and employees of a savings association the accounts of which are insured by the Federal Deposit Insurance Corporation for false entries in any books, reports, or statements of such association under section 1006 of title 18, United States Code.

"(5)(A) The Chairman may, in his or her discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Chairman by written notice. As used in the section, the term 'violates' includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(B) In determining the amount of the penalty the Chairman shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

"(C) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within 10 days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

"(D) Any company or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the company is located, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within 30 days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Chairman. The Chairman shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Chairman shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

"(E) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Chairman shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

"(F) The Chairman shall promulgate regulations establishing procedures necessary to implement this paragraph.

"(G) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States.

"(j) Judicial Review.—Any party aggrieved by an order of the Chairman under this section may obtain a review of such order by filing in the court of appeals of the United States for the circuit in which the principal office of such party is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Chairman be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Chairman, and thereupon the Chairman shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Chairman. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28, United States Code.

"(k) SAVING CLAUSE.—Nothing contained in this section, other than any transaction approved under subsection (e)(2) or section 13 of the Federal Deposit Insurance Act, shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any act, action, or conduct in violation of the antitrust laws.

"(l) TREATMENT OF FDIC INSURED STATE SAVINGS BANKS AND COOPERATIVE BANKS AS SAVINGS ASSOCIATIONS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, a savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) and a cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) upon application shall be deemed to be a savings association for the purpose of this section, if the Chairman determines that such bank is a qualified thrift lender (as determined under subsection (m)).

"(2) FAILURE TO MAINTAIN QUALIFIED THRIFT LENDER STATUS.—If any savings bank which is deemed to be a savings association under paragraph (1) subsequently fails to maintain its status as a qualified thrift lender, as determined by the Chairman, such bank may not thereafter be a qualified thrift lender for a period of 5 years.

"(m) QUALIFIED THRIFT LENDER REQUIREMENTS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), any savings association shall have the status of a qualified thrift lender if—

"(A) the qualified thrift investments of such savings association equal or exceed 60 percent of the total tangible assets of such association; and

"(B) the qualified thrift investments of such savings association continue to equal or exceed 60 percent of the total tangible assets of such association on an average basis in 3 out of every 4 quarters and 2 out of every 3 years.

"(2) TRANSITION RULE FOR CERTAIN ASSOCIATIONS.—

"(A) IN GENERAL.—If any savings association—

"(i) which was chartered as a savings bank or a cooperative bank under State law before October 15, 1982; or

"(ii) the principal assets of which were acquired from an association which was chartered as a savings bank or a cooperative bank under State law before October 15, 1982,

meets the requirements of subparagraph (B), such savings association shall be treated as a qualified thrift lender during the 10-year period beginning on January 1, 1988.

"(B) SUBPARAGRAPH (B) REQUIREMENTS.—A savings association meets the requirements of this subparagraph if, in the determination of the Chairman—

"(i) the actual thrift investment percentage of such association does not, after the date of the enactment of the Competitive Equality Amendments of 1987, decrease below the actual thrift investment percentage of such association on such date of enactment; and

"(ii) the amount by which—

"(I) the actual thrift investment percentage of such association at the end of each period described in the following table, exceeds

"(II) the actual thrift investment percentage of such association on such date of enactment,

is equal to or greater than the applicable percentage (as determined under the following table) of the amount by which 60 percent exceeds the actual thrift investment percentage of such association on such date of enactment:

"For the following period:	The applicable percentage is:
The 2½-year period beginning on such date of enactment...	225 percent
The 5-year period beginning on such date of enactment.......	50 percent
The 7½-year period beginning on such date of enactment...	75 percent

"(3) EXCEPTIONS GRANTED BY CHAIRMAN.—Notwithstanding paragraph (1), the Chairman may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in such paragraph as the Chairman deems necessary if—

"(A) the Chairman determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for a savings association to meet such investment requirements; or

"(B) the Chairman determines that—

"(i) the grant of any such exception will facilitate an acquisition under section 13(c) or (k) of the Federal Deposit Insurance Act; and

"(ii) the acquired association will comply with the transition requirements of paragraph (2)(B).

"(4) FAILURE TO ACHIEVE AND MAINTAIN QUALIFIED THRIFT LENDER STATUS.—

"(A) A savings association that fails to achieve or maintain its status as a qualified thrift lender shall, within 3 years of the date on which the association loses its status as a qualified thrift lender, convert its charter to one or more bank charters, unless during the one-year period following the date it loses its status as a qualified thrift lender, the association becomes a qualified thrift lender and does not thereafter lose its status as a qualified thrift lender.

"(B) Until such conversion is complete, such savings association shall not—

"(i) after 3 years from the date it loses its qualified thrift lender status, be eligible to obtain advances from any Federal Home Loan Bank and shall repay any outstanding advances promptly;

"(ii) expand its activities beyond those conducted on the date the savings association loses its status as a qualified thrift lender;

"(iii) open any additional branch offices; or "(iv) after 3 years from the date it loses its qualified thrift lender status, engage directly or through a subsidiary in an activity unless such activity is permissible for either a national bank or a State bank (other than a savings bank) located in the State in which the association is located.

"(C) Any company that controls a savings association identified in paragraph (A) shall, after 3 years following the date on which the savings association loses its status as a qualified thrift lender, be subject to all of the provisions of the Bank Holding Company Act of 1956, as amended, and other applicable statutes as if the company were a bank holding company and the savings association were a bank as those terms are defined in the Bank Holding Company Act of 1956.

"(D) Any bank chartered as a result of the requirements of this section shall be obligated until December 31, 1993, to pay the assessments assessed on savings associations under the Federal Deposit Insurance Act. Such association shall also be assessed, on the date of its change of status from a Savings Association Insurance Fund member, the exit fee provided in section 5(d)(2) of the Federal Deposit Insurance Act. Such institution shall not be obligated to pay the assessments assessed on banks under the Federal Deposit Insurance Act until—

"(i) December 31, 1993, or

"(ii) the institution's change of status from a Savings Association Insurance Fund member to a Bank Insurance Fund member,

whichever is later.

"(E) As used in this subsection, 'bank' shall mean a national member bank or a State bank (other than a savings bank), as defined in section 3 of the Federal Deposit Insurance Act.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term 'actual thrift investment percentage' means the percentage determined by dividing—

"(i) the amount of the qualified thrift investments of a savings association, by

"(ii) the total amount of tangible assets of such savings association.

"(B) QUALIFIED THRIFT INVESTMENTS.—The term 'qualified thrift investments' means, with respect to any savings association, the sum of—

"(i) the aggregate amount of loans, equity positions, or securities held by the savings association (or any subsidiary of such association) which are related to domestic residential real estate or manufactured housing;

"(ii) the value of property used by such association or subsidiary in the conduct of the business of such association or subsidiary;

"(iii) subject to paragraph (6), the liquid assets of the type required to be maintained under section 5A of the Federal Home Loan Bank Act; and "(iv) subject to paragraph (6), 50 percent of the dollar amount of the residential mortgage loans originated by such savings association or subsidiary and sold within 90 days of origination.

"(6) LIMITATION ON TREATMENT OF CERTAIN ASSETS AS THRIFT INVESTMENTS.—The aggregate amount of the assets described in clauses (iii) and (iv) of paragraph (5)(B) which may be taken into account in determining the amount of the qualified thrift investments of any savings association shall not exceed the amount which is equal to 10 percent of the tangible assets of such association.

"(n) TYING RESTRICTIONS.—

"(1) STATE CHARTERED SAVINGS ASSOCIATION SUBSIDIARIES.—A State chartered savings association subsidiary of a savings and loan holding company shall be subject to section 5(q) of the Home Owners' Loan Act of 1933, and regulations prescribed under such subsection, in the same manner and to the same extent as an association (as defined in section 2(d) of such Act).

"(2) HOLDING COMPANIES AND CERTAIN AFFILIATES.—A savings and loan holding company and any of its affiliates (other than a savings association) shall be subject to section 5(q) of the Home Owners' Loan Act of 1933, and regulations prescribed under such subsection, in connection with transactions involving the products or services of such company or affiliate and those of an affiliated savings association as if such company or affiliate were an association (as defined in section 2(d) of such Act).

"(o) MUTUAL HOLDING COMPANIES.—

"(1) IN GENERAL.—Notwithstanding any provision of Federal law other than this title, a savings association operating in mutual form may reorganize so as to become a holding company by—

"(A) chartering an interim savings association, the stock of which is to be wholly owned by the mutual association; and

"(B) transferring the substantial part of its assets and liabilities, including all of its insured liabilities, to the interim savings association.

"(2) DIRECTORS AND CERTAIN ACCOUNT HOLDERS' APPROVAL OF PLAN REQUIRED.—A reorganization is not authorized under this subsection unless—

"(A) a plan providing for such reorganization has been approved by a majority of the board of directors of the mutual savings association; and

"(B) in the case of an association in which holders of accounts and obligors exercise voting rights, such plan has been submitted to and approved by a majority of such individuals at a meeting held at the call of the directors in accordance with the procedures prescribed by the association's charter and bylaws.

"(3) NOTICE TO THE CHAIRMAN; DISAPPROVAL PERIOD.—

"(A) NOTICE REQUIRED.—At least 60 days prior to taking any action described in paragraph (1), a savings association seeking to establish a mutual holding company shall provide written notice to the Chairman. The notice shall contain such relevant information as the Chairman shall require by regulation or by specific request in connection with any particular notice.

"(B) TRANSACTION ALLOWED IF NOT DISAPPROVED.—Unless the Chairman within such 60-day notice period disapproves the proposed holding company formation, or extends for another 30 days the period during which such disapproval may be issued, the savings association providing such notice may proceed with the transaction, if the requirements of paragraph (2) have been met.

"(C) GROUNDS FOR DISAPPROVAL.—The Chairman may disapprove any proposed holding company formation only if—

"(i) such disapproval is necessary to prevent unsafe or unsound practices;

"(ii) the financial or management resources of the savings association involved warrant disapproval;

"(iii) the savings association fails to furnish the information required under subparagraph (A); or

"(iv) the savings association fails to comply with the requirement of paragraph (2).

"(D) RETENTION OF CAPITAL ASSETS.—In connection with the transaction described in paragraph (1), a savings association may, subject to the approval of the Chairman, retain capital assets at the holding company level to the extent that such capital exceeds the association's capital requirement established by the Chairman pursuant to sections 5 (s) and (t) of this Act.

"(4) OWNERSHIP.—Persons having ownership rights in the mutual association pursuant to section 5(b)(1)(B) of this Act or State law shall have the same ownership rights with respect to the mutual holding company.

"(5) PERMITTED ACTIVITIES.—A mutual holding company may engage only in the following activities:

"(A) Investing in the stock of a savings association.

"(B) Acquiring a mutual association through the merger of such association into a savings association subsidiary of such holding company or an interim savings association subsidiary of such holding company.

"(C) Subject to paragraph (6), merging with or acquiring another holding company, one of whose subsidiaries is a savings association.

"(D) Investing in a corporation the capital stock of which is available for purchase by a savings association under Federal law or under the law of any State where the subsidiary savings association or associations have their home offices.

"(E) Engaging in the activities described in subsection (c)(2), except subparagraph (B).

"(6) LIMITATIONS ON CERTAIN ACTIVITIES OF ACQUIRED HOLDING COMPANIES.—

"(A) NEW ACTIVITIES.—If a mutual holding company acquires or merges with another holding company under paragraph (5)(C), the holding company acquired or the holding company resulting from such merger or acquisition may only invest in assets and engage in activities which are authorized under paragraph (5).

"(B) GRACE PERIOD FOR DIVESTING PROHIBITED ASSETS OR DISCONTINUING PROHIBITED ACTIVITIES.—Not later than 2 years following a merger or acquisition described in paragraph (5)(C), the acquired holding company or the holding company resulting from such merger or acquisition shall—

"(i) dispose of any asset which is an asset in which a mutual holding company may not invest under paragraph (5); and

"(ii) cease any activity which is an activity in which a mutual holding company may not engage under paragraph (5).

"(7) REGULATION.—Unless the context otherwise requires, a mutual holding company shall be subject to the other requirements of this section regarding regulation of holding companies.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) MUTUAL HOLDING COMPANY.—The term 'mutual holding company' means a corporation organized as a holding company under this subsection.

"(B) MUTUAL ASSOCIATION.—The term "mutual association" means—

"(i) a savings association; or

"(ii) a savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act),

which is operating in mutual form.

"SEC. 11. TRANSACTIONS WITH AFFILIATES; LOANS AND EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS AND CONTROLLING PERSONS.

"(a) TRANSACTIONS WITH AFFILIATES.—Except to the extent that the Chairman determines for reasons of safety and soundness that additional restrictions should apply, the provisions of section 23A and section 23B of the Federal Reserve Act shall be applicable to every savings association in the same manner and to the same extent as if such savings association were a member bank as defined in that Act, except that—

"(1) no loan or other extension of credit may be made to any affiliate unless that affiliate is engaged only in activities described in section 10(c)(2)(F)(i); and

"(2) no savings association may enter into any transaction described in section 23A(b)(7)(B) of the Federal Reserve Act with any affiliate.

For the purpose of this subsection any company which would be an affiliate of a savings association for the purposes of section 23A and section 23B of the Federal Reserve Act if such savings association were a member bank as defined in that Act shall be deemed to be an affiliate of such savings association.

"(b) LOAN LIMITS.—Except to the extent that the Chairman determines for reasons of safety and soundness that additional restrictions should apply, the provisions of section 22(h) of the Federal Reserve Act relating to limits on loans and extensions of credit by a member bank to its executive officers or directors or to any person who directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of such member bank shall be applicable to every savings association in the same manner and to the same extent as if such savings association were a member bank as defined in that Act.

"(c) ENFORCEMENT.—Violations of this section shall be enforced by the Chairman in accordance with section 8 of this Federal Deposit Insurance Act.

"SEC. 12. ADVERTISING.

"No savings association shall carry on any sale, plan, or practices, or any advertising, in violation of regulations promulgated by the Chairman.

"SEC. 13. SEPARABILITY PROVISION.

"If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.".

SEC. 302. REPEALS.

(a) Section 407(m), section 408, section 409, section 410, section 413, section 414, and section 416 of the National Housing Act are repealed.

(b) SAVINGS PROVISIONS.—

(1) Any association that had entered into a plan under section 10 of the Home Owners' Loan Act of 1933 (as in effect prior to enactment of the FIRRE Act) approved by the Federal Home Loan Bank Board, shall be grandfathered hereunder as long as the association adheres to the plan and continues to submit to the Chairman of the Office of Savings Associations regular and complete reports on the association's progress in meeting the association's goals under the plan.

(2) Any insured institution which had entered into a plan under section 416 of the National Housing Act (as in effect prior to enactment of the FIRRE Act) approved by the Federal Savings and Loan Corporation shall be grandfathered hereunder as long as the insured institution adheres to the plan and continues to submit to the Chairman of the Office of Savings Associations regular and complete reports on the insured institutions progress in meeting the insured institutions goals under the plan. For the purpose of this subsection, the term "insured institution" shall have the same meaning as in section 408 of the National Housing Act, as in effect prior to the enactment of the FIRRE Act.

SEC. 303. QUALIFIED THRIFT LENDER.

(a) IN GENERAL.—Section 10(m) of the Home Owners' Loan Act of 1933 is amended to read as follows:

"(m) QUALIFIED THRIFT LENDER REQUIREMENTS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), any savings association is a qualified thrift lender if—

"(A) the savings association's qualified thrift investments equal or exceed 60 percent of the savings association's portfolio assets; and

"(B) the savings association's qualified thrift investments continue to equal or exceed 60 percent of the savings association's portfolio assets, as measured by a daily or weekly average of such qualified thrift investments and such portfolio assets, for every 2-year period beginning on July 1, 1991.

"(2) Transition rule for certain associations.—

"(A) In general.—If any savings association—

"(i) which was chartered as a savings bank or a cooperative bank under State law before October 15, 1982; or

"(ii) the principal assets of which were acquired from an association which was chartered as a savings bank or a cooperative bank under State law before October 15, 1982,

meets the requirements of subparagraph (B), such savings association shall be treated as a qualified thrift lender during the 10-year period beginning on January 1, 1988.

"(B) Subparagraph (b) requirements.—A savings association meets the requirements of this subparagraph if, in the determination of the Chairman—

"(i) the actual thrift investment percentage of such association does not, after the date of the enactment of the Competitive Equality Amendments of 1987, decrease below the actual thrift investment percentage of such association on such date of enactment; and

"(ii) the amount by which—

"(I) the actual thrift investment percentage of such association at the end of each period described in the following table, exceeds

"(II) the actual thrift investment percentage of such association on such date of enactment,

is equal to or greater than the applicable percentage (as determined under the following table) of the amount by which 60 percent exceeds the actual thrift investment percentage of such association on such date of enactment:

"For the following period:	The applicable percentage is:
The 2½-year period beginning on such date of enactment	25 percent
The 5-year period beginning on such date of enactment	50 percent
The 7½-year period beginning on such date of enactment	75 percent

"(3) Exceptions granted by chairman.—Notwithstanding paragraph (1), the Chairman may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in such paragraph as the Chairman deems necessary if—

"(A) the Chairman determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for a savings association to meet such investment requirements; or

"(B) the Chairman determines that—

"(i) the grant of any such exception will facilitate an acquisition under section 13 (c) or (k) of the Federal Deposit Insurance Act; and

"(ii) the acquired association will comply with the transition requirements of paragraph (2)(B).

"(4) FAILURE TO BECOME AND REMAIN A QUALIFIED THRIFT LENDER.—

"(A) CONVERSION REQUIREMENT.—A savings association that fails to become or remain a qualified thrift lender shall, within 3 years after the date on which the association should have become or ceases to be a qualified thrift lender, convert its charter to one or more bank charters, unless during the one-year period following that date, the association becomes a qualified thrift lender and does not thereafter cease to be a qualified thrift lender.

"(B) RESTRICTIONS APPLICABLE PENDING CONVERSION.—Until such conversion is complete, such savings association shall not—

"(i) after 3 years from the date it ceases to be a qualified thrift lender, be eligible to obtain advances from any Federal Home Loan Bank, and shall repay any outstanding advances promptly;

"(ii) expand its activities beyond those conducted on the date the savings association ceases to be a qualified thrift lender;

"(iii) open any additional branch offices; or

"(iv) after 3 years from the date it ceases to be a qualified thrift lender, engage directly or through a subsidiary in an activity unless such activity is permissible for either a national bank or a State bank (other than a savings bank) located in the State in which the association is located.

"(C) HOLDING COMPANY REGULATION.—Any company that controls a savings association identified in paragraph (A) shall, after 3 years following the date on which the savings association loses its status as a qualified thrift lender, be subject to all of the provisions of the Bank Holding Company Act of 1956 and other applicable statutes in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act of 1956.

"(D) DEPOSIT INSURANCE ASSESSMENTS.—Any bank chartered as a result of the requirements of this section shall be obligated until December 31, 1993, to pay the assessments assessed on savings associations under the Federal Deposit Insurance Act. Such association shall also be assessed, on the date of its change of status from a Savings Association Insurance Fund member, the exit fee and entrance fee provided in section 5(d) of the Federal Deposit Insurance Act. Such institution shall not be obligated to pay the assessments assessed on banks under the Federal Deposit Insurance Act until—

"(i) December 31, 1993, or

"(ii) the institution's change of status from a Savings Association Insurance fund member to a Bank Insurance Fund member.

whichever is later.

"(E) EXEMPTION FOR SPECIALIZED SAVINGS ASSOCIATION SERVING TRANSIENT MILITARY PERSONNEL.—Subparagraph (A) shall not apply to a savings association subsidiary of a savings and loan holding company if—

"(i) the savings and loan holding company is a reciprocal interinsurance exchange that acquired control of the insured institution before January 1, 1984; and

"(ii) at least 90 percent of the customers of the savings and loan holding company and its subsidiaries and affiliates are active or former officers in the United States military services or the widows, widowers, divorced spouses, or current or former dependents of such officers.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term 'actual thrift investment percentage' means the percentage determined by dividing—

"(i) the amount of a savings association's qualified thrift investments, by

"(ii) the amount of the savings association's portfolio assets.

"(B) PORTFOLIO ASSETS.—The term 'portfolio assets' means, with respect to any savings association, the total assets of the savings association, less the following—

"(i) goodwill and other intangible assets;

"(ii) the value of property used by the savings association to conduct its business; and

"(iii) liquid assets to the extent that the association is required to maintain such assets under section 4A of the Home Owners' Loan Act of 1933.

"(C) QUALIFIED THRIFT INVESTMENTS.—

"(i) The term 'qualified thrift investments' means, with respect to any savings association, the sum of—

"(I) the aggregate amount of loans held by the savings association (or any subsidiary of the association) that were made to purchase, refinance, construct, improve, or repair domestic residential housing or manufactured housing;

"(II) home-equity loans, to the extent permitted under clause (ii);

"(III) mortgage-backed securities; and

"(IV) 50 percent of the dollar amount of the residential mortgage loans originated by such savings association and sold within 90 days of origination, but the dollar amount treated as qualified thrift investments pursuant to this subclause may not exceed the amount which is equal to 5 percent of the savings association's portfolio investments.

"(ii) The Chairman shall determine annually what percentage of outstanding home-equity loans by all savings associations are used for the purposes described in clause (i). A savings association may include pursuant to clause (i)(II) the amount determined by multiplying that percentage by the aggregate amount of its home-equity loans.

"(iii) The term 'qualified thrift investments' excludes—

"(I) that portion of any loan that is used for any purpose other than purchasing, refinancing, improving, or repairing domestic residential housing or manufactured housing; or

"(II) goodwill or any other intangible asset.

"(D) DEFINITION.—As used in this subsection, the term 'insured bank' means an insured bank (other than a savings bank), as defined in section 3 of the Federal Deposit Insurance Act.

"(6) CONSISTENT ACCOUNTING REQUIRED.—In determining the amount of a savings association's portfolio assets, the assets of any subsidiary of the savings association shall be consolidated with the assets of the savings association if—

"(A) assets of the subsidiary are consolidated with the assets of the savings association in determining the savings association's qualified thrift investments; or

"(B) residential mortgage loans originated by the subsidiary are included pursuant to paragraph (5)(C)(i)(III) in determining the savings association's qualified thrift investments.

"(7) ASSOCIATIONS THAT HAVE PREVIOUSLY FAILED TO REMAIN QUALIFIED THRIFT LENDERS.—If, as of June 30, 1991, any savings association is required to convert its charter pursuant to paragraph (4)(A) as in effect on that date, the amendment to paragraph (4)(A) made by section 303 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall not be construed as extending the period for conversion.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on July 1, 1991.

SEC. 304. TRANSITIONAL RULE FOR CERTAIN TRANSACTIONS WITH AFFILIATES.

(a) CONSISTENCY OF CERTAIN REGULATIONS WITH SECTION 23A OF THE FEDERAL RESERVE ACT.—Not later than 6 months after the date of enactment of this Act, the Chairman of the Office of Savings Associations shall revise his conflicts regulations so as not to prohibit a thrift institution from purchasing mortgages from a mortgage-banking affiliate to the same extent as a member bank may do so under section 250.250 of title 12, Code of Federal Regulations.

(b) TRANSITIONAL PERIOD.—Notwithstanding section 11(a) of the Home Owners' Loan Act of 1933 (as added by section 301 of this Act), a thrift institution that, before April 12, 1989, had received approval from the Federal Savings and Loan Insurance Corporation pursuant to section 408(d)(6) of the National Housing Act as then in effect to purchase mortgages from a mortgage-banking affiliate may, during the 6-month period following the date on which final regulations are prescribed pursuant to subsection (a), continue to engage in transactions for which it had received such approval. Any savings association that engages in such transactions pursuant to this subsection shall comply with the standards that were applicable under section 408(d)(6) as in effect on the day before the date of enactment of this Act.

(c) AUTHORITY TO EXTEND REGULATORY APPROVALS THAT WOULD OTHERWISE LAPSE DURING THE TRANSITION PERIOD.—The Chairman of the Office of Savings Associations may extend until the expiration of the 6-month period described in subsection (b) any approval granted by the Federal Savings and Loan Insurance Corporation that expires or would expire before the expiration of that 6-month period. In determining whether to grant such exemptions, the Chairman shall apply the standards that were applicable under section 408(d)(6) as in effect on the day before the date of enactment of this Act.

TITLE IV—DISSOLUTION AND TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

SEC. 401. DISSOLUTION.

(a) IN GENERAL.—On the date which is 60 days after the date of enactment of this Act, except as otherwise provided, the Federal Savings and Loan Insurance Corporation shall cease to exist and shall for all purposes be considered dissolved.

(b) TRANSFER OF FUNCTIONS.—Except as otherwise provided in this Act, all functions previously performed under title IV of the National Housing Act by the Federal Savings and Loan Insurance Corporation are transferred to and shall be performed by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation. The Federal Deposit Insurance Corporation shall have the power to take any action necessary on behalf of the Federal Savings and Loan Insurance Corporation in connection with its dissolution.

SEC. 402. CONTINUATION OF RULES.

(a) IN GENERAL.—All rules, regulations, and orders of the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board, as operating head thereof, in effect on the date of enactment of this Act which relate to—

(1) the provision, rates, cancellation, or payment of insurance of accounts,

(2) the administration of the insurance fund, or

(3) the conduct of conservatorships or receiverships (including the handling of claims against receiverships),

shall remain in effect and shall be enforceable by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, unless the Federal Deposit Insurance Corporation, after consultation with the Chairman of the Office of Savings Associations, determines otherwise.

(b) Other Rules, Regulations.—All other rules, regulations, orders, and administrative actions of the Federal Savings and Loan Insurance Corporation (not described in subsection (a)) shall remain in effect and—

(1) shall be enforceable by the Federal Deposit Insurance Corporation, or

(2) if such rules, regulations, orders, and administrative actions relate to a function which has been transferred to the Chairman of the Office of Savings Associations, such rules, regulations, orders, or administrative actions shall be enforceable by the Chairman of the Office of Savings Associations.

(c) Allocation of Authority.—Not later than 60 days after the date of enactment of this Act, the Chairman of the Office of Savings Associations and the Chairman of the Federal Deposit Insurance Corporation shall identify the rules, regulations, and orders described in subsections (a) and (b) and shall publish in the Federal Register notice identifying such rules, regulations, and orders and the allocation of authority therefor. The foregoing requirement shall not apply to any order which by its terms provides for nondisclosure.

(d) Savings Provision.—All orders, determinations, rules, and regulations, that—

(1) have been issued, made, or allowed to become effective by the Federal Savings and Loan Insurance Corporation, or by a court of competent jurisdiction, in the performance of functions which are transferred by this Act; and

(2) are in effect on the date this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Chairman of the Office of Savings Associations, or by the Federal Deposit Insurance Corporation, or by a court of competent jurisdiction, or by operation of law.

(e) FDIC Authority Over Certain Savings Associations.—The Federal Deposit Insurance Corporation shall have the power to promulgate and enforce rules, regulations, or orders to prevent actions or practices of savings associations (as defined in section 3 of the Federal Deposit Insurance Act) if such actions or practices pose a serious threat to the Savings Association Insurance Fund or the Bank Insurance Fund.

SEC. 403. PERSONNEL.

(a) In General.—The Chairman of the Office of Savings Associations and the Chairman of the Federal Deposit Insurance Corporation, acting jointly, shall in their sole discretion—

(1) identify which employees of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation were, on the day before the date of enactment of this Act, engaged in functions or activities transferred to the Federal Deposit Insurance Corporation; and

(2) determine which of the employees so identified shall be transferred to the Federal Deposit Insurance Corporation.

The employees so determined to be transferred shall be entitled to the rights described in subsection (b).

(b) Rights of Identified Employees.—The rights described in this subsection are the following:

(1) Each employee identified in a transferred function shall be transferred to the Federal Deposit Insurance Corporation for employment and shall be guaranteed a position with the same status such employee had on the day immediately preceding the transfer.

(2) In the case of an employee who occupies a position in the excepted service, the excepted appointing authority established pursuant to law or regulation of the Office of Personnel Management for filling such position will be transferred to the Federal Deposit Insurance Corporation.

(3) All Board and Federal Savings and Loan Insurance Corporation employees transferring with their function shall be transferred to the Federal Deposit Insurance Corporation not later than 60 days after the date of enactment of this Act. For purposes of determining assignment rights after transfer, any transfer from the Board or the Federal Savings and Loan Insurance Corporation to the Federal Deposit Insurance Corporation shall be deemed a transfer of function consistent with Office of Personnel Management regulations promulgated pursuant to section 3503 of title 5, United States Code. After transfer to the Federal Deposit Insurance Corporation, transferring employees shall be placed consistent with section 351 of title 5, Code of Federal Regulations and shall receive notice of their assignment rights in a manner described to section 351 of title 5, Code of Federal Regulations, no later than 120 days after the effective date of their transfer to Federal Deposit Insurance Corporation.

(4) All Board and Federal Savings and Loan Insurance Corporation employees who transfer with their functions may be placed in competitive areas at Federal Deposit Insurance Corporation separate and apart from the competitive areas in existence at the Federal Deposit Insurance Corporation for purposes of placement. The Federal Deposit Insurance Corporation may provide for the assignment of a transferred employee in an excepted service position to a position in the competitive service. A transferring employee who is in the excepted service and is placed by Federal Deposit Insurance Corporation in a competitive service position shall have his or her appointment converted to career or career conditional in accordance with section 315.701 of title 5, Code of Federal Regulations.

(5) A transferring employee in the Senior Executive Service shall be placed in a comparable executive level position at the Federal Deposit Insurance Corporation.

(6) Transferring employees shall receive notice of their position assignment not later than 120 days after the effective date of their transfer.

(7) Transferring employees shall be entitled to pay and grade retention in accordance with the principles reflected in regulations promulgated by the Office of Personnel Management pursuant to sections 5361 through 5366 of title 5, United States Code.

(8) Any employee who does not transfer with his or her function to the Federal Deposit Insurance Corporation shall be entitled to severance pay in accordance with regulations promulgated by the Office of Personnel Management pursuant to section 5595 of title 5, United States Code, and shall be entitled to placement assistance under the Office of Personnel Management's Displaced Employee Program in accordance with sections 330.301 through 330.306 of title 5, Code of Federal Regulations. Notwithstanding the foregoing, severance pay shall in no event be less than 90 days pay. All such severance pay shall be paid by the Chairman of the Office of Savings Associations.

(9) Each employee in an excepted service position who does not transfer shall be entitled to placement assistance under the Office of Personnel Management's Interagency Placement Assistance Program for a period of 120 days after the effective date of the transfer.

(10) If a transferred Board or Federal Savings and Loan Insurance Corporation employee declines an offer of employment by the Federal Deposit Insurance Corporation and if such offer is not considered reasonable under regulations promulgated by the Office of Personnel Management pursuant to section 8336(d)(1) or section 8414(b)(1)(B) of title 5, United States Code, such employee shall be entitled to—

(A) the benefits specified in paragraph (8) or (9), and

(B) if otherwise eligible, shall be entitled to an early optional retirement under section 8336(d)(2) or section 8414(b)(1)(B) of title 5, United States Code.

Any benefits paid pursuant to this paragraph shall be paid by the Chairman of the Office of Savings Associations.

(11) If the Federal Deposit Insurance Corporation determines within one year after the transfer of functions that a reorganization of the combined workforce is required, such reorganization shall be deemed a "major reorganization" for purposes of affording transferred employees early optional retirement under section 8336(d)(2) or section 8414(b)(1)(B) of title 5, United States Code.

(12) Any employee employed by the Federal Deposit Insurance Corporation as a result of the transfer may retain through the end of the calendar year during which such transfer occurs membership in any employee benefit program of the Federal Home Loan Bank Board, including insurance, which he or she has on the date of enactment of this Act, if the employee does not elect to give up such membership and the benefit or program is continued by the Chairman of the Office of Savings Associations. The difference in the cost between the benefits which would have been provided by the Federal Deposit Insurance Corporation and those provided by this section shall be paid by the Chairman of the Office of Savings Associations.

(13) Subject to the exclusions set forth in section 7112(b) of title 5, United States Code, an employee transferred to the Federal Deposit Insurance Corporation shall be subject only to the provisions of labor organization certification and collective

bargaining structures in place at the Federal Deposit Insurance Corporation.

SEC. 404. DIVISION OF PROPERTY AND PERSONNEL.

Not later than 60 days after the date of enactment of this Act, the Chairman of the Office of Savings Associations, jointly with the Chairman of the Federal Deposit Insurance Corporation, shall in accordance with this Act divide between the Chairman of the Office of Savings Associations and the Federal Deposit Insurance Corporation, all personnel and all property of the Federal Savings and Loan Insurance Corporation and the Federal Home Loan Bank Board. Any disagreement shall be resolved by the Director of the Office of Management and Budget.

SEC. 405. REPEALS.

Except as otherwise provided in this Act, sections 401, 402, 403, 404, 405, 406, 407 (except subsection (m)), 411, and 415 of the National Housing Act are hereby repealed.

SEC. 406. REPORT.

Immediately prior to its dissolution, the Federal Savings and Loan Insurance Corporation shall provide in writing to the Secretary of the Treasury, the Director of the Office of Management and Budget, and to the Congress, a final accounting of its finances and operations.

TITLE V—FINANCING FOR THRIFT RESOLUTIONS

Subtitle A—Resolution Trust Corporation

SEC. 501. RESOLUTION TRUST CORPORATION ESTABLISHED.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 21 the following new section:

"SEC. 21A. RESOLUTION TRUST CORPORATION ESTABLISHED.

"(a) Establishment.—There is hereby established the Resolution Trust Corporation (hereinafter referred to as the 'Corporation') with the powers and authorities herein provided. The Corporation shall be under the direction of the Oversight Board. The Oversight Board and the Corporation shall not be an 'agency' or 'executive agency' for purposes of title 5, United States Code.

"(b) Purposes.—The purpose of the Corporation shall be to carry out a program, under the direction of the Oversight Board—

"(1) to manage and resolve all cases involving institutions, the accounts of which were insured by the Federal Savings and Loan Insurance Corporation, prior to the effective date of the FIRRE Act, for which a receiver or liquidating conservator—

"(A) was appointed between January 1, 1989, and the date of enactment of such Act, or

"(B) is appointed within 36 months after the date of the enactment of such Act;

"(2) to manage and wind up or otherwise dispose of the assets of the Federal Asset Disposition Association;

"(3) to conduct the operations of the Corporation in a manner which maximizes the recoveries on assets acquired by the Corporation, make efficient use of funds obtained from the Funding Corporation, and minimize losses realized in the resolution of cases; and

"(4) to perform such other functions as authorized under this Act.

"(c) Authority and Limitations.—

"(1) In carrying out its activities, the Corporation shall possess all of the rights, powers, duties, and obligations provided in sections 11, 12, and 13 of the Federal Deposit Insurance Act, or otherwise granted herein. The Corporation shall not have the power to obligate the Federal Deposit Insurance Corporation or its funds. In connection with providing assistance to an institution, the Corporation shall consider and be subject to the limitations set forth in section 13(c)(4) of the Federal Deposit Insurance Act.

"(2)(A) As of the date of enactment of the FIRRE Act, the Corporation shall replace the Federal Savings and Loan Insurance Corporation as receiver or conservator for any institution for which the Federal Savings and Loan Insurance Corporation was appointed conservator or receiver during the period beginning on January 1, 1989, and ending on the date of enactment of the FIRRE Act. Effective on the date of enactment of such Act and notwithstanding section 11A of the Federal Deposit Insurance Act, the Corporation shall assume the position and responsibilities of the Federal Savings and Loan Insurance Corporation in the management contract between the Federal Savings and Loan Insurance Corporation and the Federal Deposit Insurance Corporation, and such contract shall remain in full force effect for a period not to exceed 30 days during which the Oversight Board and the Federal Deposit Insurance Corporation may enter into a new contract.

"(B) During the 36 months following the date of enactment of the FIRRE Act, whenever the Federal Deposit Insurance Corporation has the power or authority to appoint itself as liquidating conservator or receiver for a Savings Association Insurance Fund member, the Corporation shall have such power and authority, and whenever the Chairman of the Office of Savings Associations shall appoint a liquidating conservator or receiver for any such member, only the Corporation shall be appointed.

"(d) Oversight Board.—

"(1) Membership.—The Oversight Board of the Resolution Trust Corporation, shall serve as the board of directors thereof, and shall consist of 5 members—

"(A) the Secretary of the Treasury,

"(B) the Chairman of the Federal Reserve Board,

"(C) the Attorney General of the United States, and

"(D) 2 members from the private sector.

"(2) Chairman.—The Chairman of the Oversight Board shall be the Secretary of the Treasury.

"(3) Private sector members.—The 2 private sector members shall be appointed by the President and shall have substantial experience in the management of large business organizations engaged in real estate, finance, or development activities.

"(4) TERMS OF OFFICE, SUCCESSION, DELEGATION, AND VACANCIES.—The term of each member of the Oversight Board shall expire when the Resolution Trust Corporation is terminated. Vacancies on the Oversight Board shall be filled in the same manner as the vacant position was previously filled.

"(5) COMPENSATION.—Members of the Oversight Board shall receive reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Oversight Board, as set forth in the Oversight Board's bylaws, except that such allowances shall not exceed the maximum fixed by subchapter 1 of chapter 57 of title 5, United States Code, for officers and employees of the United States.

"(6) DUTIES.—The Oversight Board shall review and have overall responsibility over the work, progress, management and activities of the Corporation. The Oversight Board shall approve or disapprove, in its discretion, any regulation, policy, procedure, guideline, statement, contract, and other action of the Resolution Trust Corporation, and shall approve or disapprove, in its discretion, any agreement for the disposition of an institution under its management including an agreement for the purchase of assets and assumption of liabilities, consolidation or merger, or any other transaction by which any person or entity will acquire an institution subject to the provisions of this Act. Nothing in this paragraph shall preclude the Oversight Board from delegating authority to the chief executive officer or other appropriate employee of the Corporation.

"(7) QUORUM REQUIRED.—A quorum shall consist of 3 members of the Oversight Board and all decisions of the Board shall require an affirmative vote of at least a majority of the members voting.

"(8) STAFF.—The Oversight Board is authorized to employ such staff as it deems necessary and appropriate to fulfill its obligations under this Act. Such staff shall be subject to the terms and conditions of employment applicable to the Corporation. In addition, the Oversight Board may utilize the personnel of the agencies of the three government members without additional compensation.

"(9) RULES AND RECORDS.—The Oversight Board shall adopt such rules as it may deem appropriate for the transaction of its business and the accomplishment of its duties hereunder, and shall keep permanent and accurate records of its acts and proceedings.

"(e) CHIEF EXECUTIVE OFFICER.—A chief executive officer of the Corporation shall be selected by the Oversight Board and shall serve at the pleasure of the Board.

"(f) CORPORATE POWERS.—The Corporation shall be a body corporate and shall have the power to—

"(1) operate under the direction of the Oversight Board;

"(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

"(3) issue capital certificates as provided in this Act;

"(4)(A) provide for one, or more vice presidents, a secretary, a treasurer, and such other officers, employees, and agents, as may be necessary,

"(B) define the duties of such officers, employees, and agents, and

"(C) require surety bonds or make other provisions against losses occasioned by acts of such officers, employees, and agents;

"(5) subject to the approval of the Oversight Board, hire, promote, compensate, and discharge officers and employees of the Corporation, without regard to title 5, United States Code. The compensation and benefits of such employees shall be consistent with those of the Federal Deposit Insurance Corporation;

"(6) prescribe, with the approval of the Oversight Board, bylaws which shall be consistent with law and shall provide for the manner in which—

"(A) its officers, employees, and agents are selected;

"(B) its property is acquired, held, and transferred;

"(C) its general operations are to be conducted; and

"(D) the privileges granted to such Corporation by law are exercised and enjoyed;

"(7) with the consent of any executive department or agency, avail itself on a reimbursable basis of the use of information, services, staff, and facilities of such department or agency;

"(8) enter into contracts and make advance, progress, or other payments with respect to such contracts;

"(9) lease, purchase, or acquire any property, real, personal, or mixed, or any interest therein, to hold, rent, maintain, modernize, renovate, improve, use, and operate such property, to mortgage, pledge, or hypothecate such property, and to sell for cash or credit, lease, or otherwise dispose of the same;

"(10) enter into joint ventures;

"(11) obtain insurance against loss;

"(12) modify or consent to the modification of any contract or agreement to which it is a party or in which it has an interest under this Act;

"(13) deposit its securities and its current funds under the terms and conditions applicable to the Federal Deposit Insurance Corporation under section 13(b) of the Federal Deposit Insurance Act and pay fees therefor and receive interest thereon as may be agreed;

"(14) take (whenever possible) warrants, voting and nonvoting equity, or other participation interests in insured financial institutions or their holding companies, or assets or properties of institutions liquidated or otherwise resolved by the Corporation;

"(15) accept gifts or donations of services or of property, real or personal; and

"(16) exercise such other powers as set forth in this Act, and such incidental powers as are necessary to carry out its powers, duties, and functions in accordance with this Act.

"(g) SPECIAL POWERS.—

"(1) In general.—The Resolution Trust Corporation is authorized—

"(A) to set the policy on credit standards to be used by any institution for which it is responsible;

"(B) to require a merger or consolidation of an institution for which it is responsible;

"(C) to exercise all resolution powers and activities, which the Federal Deposit Insurance Corporation is authorized to exercise under the Federal Deposit Insurance Act and which the Federal Savings and Loan Insurance Corporation was authorized to exercise under title IV of the National Housing Act (as in effect on the day preceding the date of enactment of the FIRRE Act), including the powers and authorities—

"(i) with respect to receiverships or conservatorships,

"(ii) to engage in assistance transactions,

"(iii) to collect indebtedness,

"(iv) to enforce liabilities and obligations,

"(v) to renegotiate debt instruments, and

"(vi) to exercise any incidental power and authority similar to those of the Federal Deposit Insurance Corporation which may be necessary to fulfill its obligations and duties under this Act; and

"(D) to take such other action as it determines may be necessary to carry out the purposes of this section.

"(2) Contractual powers.—

"(A) General rule.—The Corporation is authorized to enter into contracts with the Federal Deposit Insurance Corporation and with such other persons or entities, public and private, including State housing finance authorities (as defined in section 3 of the Federal Deposit Insurance Act), as it deems advisable and necessary in order to carry out its functions and purposes. The Federal Deposit Insurance Corporation shall be the primary manager of the Corporation in accordance with an agreement between the Federal Deposit Insurance Corporation and the Corporation, except in such case where the Corporation shall specifically contract with another person or entity.

"(B) Limitations.—

"(i) Except as provided in clause (iii), all contracts with persons or entities other than the Federal Deposit Insurance Corporation must be subject to a competitive bid process.

"(ii) The Corporation shall compensate the Federal Deposit Insurance Corporation for all costs and expenses which the Federal Deposit Insurance Corporation may incur in connection with services it provides.

"(iii) When exercising the rights and powers of the Federal Deposit Insurance Corporation as conservator or receiver, the Corporation shall contract in accordance with the procedures applicable under the Federal Deposit Insurance Act and regulations thereunder.

"(3) REVIEW OF 1988 RESOLUTION CASES.—The Corporation shall—

"(A) review and analyze (with the assistance of the Federal Deposit Insurance Corporation) all insolvent institution cases resolved by the Federal Savings and Loan Insurance Corporation between January 1, 1988, and the date of enactment of the FIRRE Act, and actively review all means by which it can reduce costs under existing Federal Savings and Loan Insurance Corporation agreements relating to such cases, including restructuring such agreements;

"(B) evaluate the costs under existing Federal Savings and Loan Insurance Corporation agreements with regard to the following:

"(i) capital loss coverage,

"(ii) yield maintenance guarantees,

"(iii) forbearances,

"(iv) tax consequences, and

"(v) any other relevant cost consideration;

"(C) review the bidding procedures used in resolving these cases in order to determine whether the bidding and negotiating processes were sufficiently competitive;

"(D) report to the Oversight Board the results and conclusions of its review. The Corporation, with the concurrence of the Oversight Board, shall exercise any and all existing legal rights to modify, renegotiate, or restructure such agreements where savings would be realized by such actions. The costs or income of any modifications shall be a liability or an asset of the Corporation or the Federal Savings and Loan Insurance Corporation Resolution Fund as determined by the Corporation.

"(4) Nothing in this section shall be construed as granting or denying the Corporation any legal rights to modify, renegotiate, or restructure agreements between the Federal Savings and Loan Insurance Corporation and any other party, which did not exist prior to the enactment of the FIRRE Act.

"(h) INSTITUTIONS ORGANIZED BY THE CORPORATION.—

"(1) All insured savings associations organized by the Corporation under this section shall be subject to such limitations, restrictions, and conditions as determined by the Corporation with respect to the following activities—

"(A) growth of assets;

"(B) lending activities;

"(C) asset acquisitions (except as necessary to serve its existing customer base with residential mortgages or consumer loans);

"(D) use of brokered deposits; and

"(E) payment of deposit rates.

"(2) All insured savings associations organized by the Corporation shall be subject to all laws, rules, and regulations otherwise applicable to them as insured savings associations.

"(3) Any insured savings association organized by the Corporation under this section that holds deposits insured by the Federal Deposit Insurance Corporation shall continue to be subject to supervision by the Chairman of the Office of Savings

Associations and Federal Deposit Insurance Corporation as provided by law.

"(i) FADA.—The Corporation shall convert the Federal Asset Disposition Association to a corporation or other business entity and sell such other corporate entity or business entity, or dissolve and wind up the affairs of such Association. In connection with any such sale, no contractual rights to manage the resolution of a savings association shall be transferred.

"(j) CAPITAL CERTIFICATES.—The Corporation shall be authorized to issue capital certificates to the Resolution Funding Corporation consistent with the provisions of section 21B of this Act in the following manner:

"(1) AUTHORIZATION TO ISSUE.—The Corporation is hereby authorized to issue to the Resolution Funding Corporation nonvoting capital certificates.

"(2) REQUIREMENT RELATING TO THE AMOUNT OF CERTIFICATES.—The amount of certificates issued by the Corporation under paragraph (1) shall be equal to the aggregate amount of funds provided by the Resolution Funding Corporation to the Corporation under section 21B.

"(3) CERTIFICATES MAY BE ISSUED ONLY TO THE RESOLUTION FUNDING CORPORATION.—Capital certificates issued under paragraph (1) may be issued only to the Resolution Funding Corporation in the manner and to the extent provided in section 21B and this section.

"(4) NO DIVIDENDS.—The Corporation shall not pay dividends on any capital certificates issued under this section.

"(k) EXEMPTION FROM TAXATION.—The Resolution Trust Corporation, the capital, reserves, and surplus thereof, and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except real estate held by the Corporation may be taxed according to its value to the same extent as other real property is taxed.

"(l) ADMINISTRATIVE EXPENSES.—Administrative expenses approved by the Oversight Board shall be paid from proceeds received from the Resolution Funding Corporation from the issuance of its obligations.

"(m) TERMINATION.—

"(1) RESOLUTION TRUST CORPORATION.—The Resolution Trust Corporation shall terminate on the expiration of the date which is 5 years after the date of enactment of the FIRRE Act.

"(2) CASE RESOLUTIONS.—Simultaneously with the termination of the Corporation, all assets and liabilities of the Corporation shall be transferred to the FSLIC Resolution Fund to be managed by the Federal Deposit Insurance Corporation with the proceeds of the net assets being provided to the Resolution Funding Corporation.

"(n) POWER TO REMOVE: JURISDICTION.—Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction. The Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia, or if the action, suit, or proceeding arises out of the actions of the Corporation with respect to an institution for which a receiver or liquidating conservator has been appointed, the United States district court for the district where the institution is located. Nothing in this section shall imply a grant of jurisdiction not otherwise granted under section 11(m) of the Federal Deposit Insurance Act when the Corporation exercises the powers and functions as conservator or receiver under such Act.

"(o) GUARANTEES OF FSLIC.—

"(1) Guarantees issued by the Federal Savings and Loan Insurance Corporation after January 1, 1989, and before the date of enactment of the FIRRE Act, made in connection with loans made to savings associations extended by the Federal Reserve Banks and Federal Home Loan Banks (the "Lenders"), and guaranteed by the Federal Savings and Loan Insurance Corporation during such period, shall by operation of law and without further action by the Chairman of the Office of Savings Associations, the Federal Savings and Loan Insurance Corporation, or any court, become and be converted into obligations, entitlements, and instruments of the Corporation.

"(2) Obligations under the guarantees to the Lenders, assumed by the Corporation under paragraph (1), shall be paid by the Corporation not later than one year after the date of enactment of this section if such loans have not previously been paid. Payment shall be made using any funds or other assets available to the Corporation, including any resources available to it through borrowing by the Resolution Funding Corporation.

"(p) ISSUE REGULATIONS.—The Corporation may issue such regulations, policies, procedures, guidelines, or statements as it considers necessary or appropriate to carry out this section. Such regulations, policies, procedures, guidelines, or statements shall be promulgated and enforced without regard to subchapter II of chapter 5 of title 5, United States Code, and, when relating to the Corporation's exercise of rights and powers under the Federal Deposit Insurance Act shall be consistent with such Act and regulations thereunder.

"(q) BORROWING.—The Corporation is authorized to borrow from the Treasury, and the Secretary of the Treasury is authorized and directed to loan to the Corporation on such terms as may be established by the Secretary of the Treasury, an amount not to exceed $5,000,000,000 outstanding at any one time. Each such loan shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yield on outstanding marketable obligations of the United States with comparable maturities. For purposes of this subsection, the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are hereby extended to include such loans.

"(r) SOLICITATION AND SELECTION OF OFFERS FOR ASSISTED ACQUISITIONS AND ASSET DISPOSITION.—

"(1) In general.—The Corporation shall prescribe procedures for the solicitation and selection of offers for assisted acquisitions and disposition of assets of institutions for which the Corporation is responsible, subject to approval by the Oversight Board. The procedures shall, consistent with the objectives of assisted acquisitions, provide for adequate competition, and fair and consistent treatment of offerors, and shall minimize cost to the Corporation and the Government.

"(2) Documentation of decisions.—The Corporation shall document decisions made in the solicitation and selection process and the reasons for the decisions. The Corporation shall maintain this documentation as well as any other documentation relating to the solicitation and selection process in its offices.

"(s) Reports and Audits.—

"(1) Reports.—

"(A) In general.—The Corporation shall annually submit a full report of its and the Oversight Board's operations, activities, budget, receipts, and expenditures for the preceding 12-month period. The report shall include statements of financial position, income and expense, and cash flow, an analysis of surplus or deficit, and such additional statements and information as necessary to make known the financial condition and operations of the Corporation in accordance with generally accepted accounting principles. The report also shall include the Corporation's financial operating plans and forecasts (including estimates of actual and future spending, and estimates of actual and future noncash obligations) taking into account the Corporation's financial commitments, guarantees, and other contingent liabilities.

"(B) Semiannual reports.—In addition to the annual report, the Corporation shall submit by April 30 and October 31 of each year, a semiannual report on activities and conditions of the Corporation for the 6-month period ending on the last day of the month prior to the month in which such report is to be submitted. Such semiannual report shall include—

"(i) a statement of the total book value of assets held by the Corporation at the beginning and at the end of the reporting period,

"(ii) the total book value of the Corporation's assets which are under the management of private persons and entities at the end of the reporting period,

"(iii) the total book value and total sale value of assets disposed of during the reporting period,

"(iv) summary data on discounts from book value at which assets of the Corporation were sold or otherwise disposed of during the reporting period,

"(v) a list of all of the areas that carried a distressed area designation during the reporting period (including a justification for removal of areas from or addition of areas to the list of distressed areas), "(vi) an evaluation of market conditions in distressed areas and a description of any changes in conditions during the reporting period,

"(vii) the number of employees of the Corporation at the end of the reporting period and the total amounts expended on employee wages and salaries during such period, and the total amounts expended on private contractors,

"(viii) any change adopted by the Oversight Board in a minimum disposition price and the reasons for such change, and

"(ix) the valuation method or methods adopted by the Corporation to value assets as well as the reasons for selection of those methods.

"(C) SUBMISSION.—The reports, including the results of the audit conducted pursuant to paragraph (2), shall be submitted to the President of the Senate and the Speaker of the House of Representatives, who shall cause the same to be printed for the information of Congress, and to the President and with respect to the annual report, the submission shall be made as soon as practicable after the first day of January each year but not later than 6 months after the close of the 12-month period covered by the report.

"(2) AUDITS.—

"(A) ANNUAL AUDIT.—The Comptroller General shall audit annually the financial statements of the Corporation in accordance with generally accepted government auditing standards unless the Comptroller General notifies the chief executive officer of the Corporation not later than 180 days before the close of a fiscal year that the Comptroller General will not perform such audit for that fiscal year. In the event of such notification, the Corporation shall contract with an independent certified public accountant to perform the annual audit of the Corporation's financial statement in accordance with generally accepted government auditing standards.

"(B) ACCESS TO BOOKS AND RECORDS.—All books, records, accounts, reports, files, and property belonging to or used by the Corporation (including the Oversight Board), or by an independent certified public accountant retained to audit the Corporation's financial statement, shall be made available to the Comptroller General.

"(t) ASSET DISPOSITION.—

"(1) IN GENERAL.—The Corporation shall develop a strategic plan and shall establish and implement policies and procedures to—

"(A) maximize the net present value of the return from the assets it owns or manages;

"(B) minimize the disruption to the local real estate markets and banking and thrift communities caused by the Corporation's operations; and

"(C) provide for an adequate level of capital for the operation of the Corporation.

The plan shall provide for the disposition of assets, consistent with the above stated objectives, in the most efficient and orderly manner. Such policies and procedures shall, at a minimum, take into consideration the current local market conditions, an appropriate financing standard, the value of the asset, the potential appreciation of and the expenses and risks associated with holding the asset for a period of time, and the sources and cost of funds to further develop the asset. The policies and procedures shall also provide for adequate competition and fair and consistent treatment of third parties seeking to conduct business with the Corporation. The Corporation shall compile and maintain a list of properties with natural, cultural, recreational or scientific values of special significance. The Corporation from time to time shall provide the list to the Secretary of the Interior, the Secretary of Agriculture, and appropriate State agencies. The Corporation's books and records shall contain evidence of the Corporation's adherence to its plans, policies, and procedures.

"(2) REGIONAL ADVISORY BOARD.—

"(A) IN GENERAL.—The Corporation shall establish no more than 12 Regional Advisory Board districts. As soon as practicable, the Corporation shall establish, in each district but not later than 90 days after the date of enactment of the FIRRE Act, a Regional Advisory Board. The Regional Advisory Boards shall continue in existence as long as the Corporation shall be in existence. A Regional Advisory Board shall consist of 5 members. The chief executive officer of the Corporation shall appoint the members of a Regional Advisory Board, who shall serve at his pleasure. The members shall be selected from those residents of the region with knowledge and experience regarding business, financial and real estate matters. A Regional Advisory Board shall consult with the Corporation on the strategic plans, marketing strategies, financing standards, and the policies and procedures developed to dispose of assets in distressed areas, and such other concerns as may assist the Corporation in furtherance of its purpose.

"(B) ADMINISTRATIVE PROVISIONS.—Except as otherwise provided herein, the Regional Advisory Boards shall be subject to the provisions of the Federal Advisory Committee Act. The members shall not be compensated except for reimbursement from the Corporation for reasonable travel and lodging expenses incurred while attending official meetings of a Regional Advisory Board. A Regional Advisory Board shall meet four times a year, or more frequently if requested by the chief executive officer of the Corporation. A Regional Advisory Board shall conduct its meetings in its district.

"(C) RULES AND PROCEDURES.—A Regional Advisory Board shall elect a chairman, vice-chairman, and secretary. The rules and procedures for the Regional Advisory Boards shall be established by the Corporation.

"(3) ALTERNATIVE PUBLIC USES.—When the value of an asset has decreased so that no reasonable recovery is anticipated, the Corporation may consider potential public uses of such asset including providing shelter for the homeless, day care centers for the children of low- and moderate-income families, or such other public purpose designated by the Secretary of Housing and Urban Development.

"(4) DISTRESSED AREAS.—

"(A) IN GENERAL.—In developing its strategic plan, the Corporation shall take the following steps to avoid adverse economic impact for those real estate markets that are distressed.

"(B) VALUATION AND DISPOSITION.—The Corporation shall establish an appraisal or other valuation method for determining the market value of real property. With respect to a real property asset with a market value in excess of a certain dollar limit, (such limit to be determined by the Oversight Board) consideration shall be given to the volume of assets above such limit and the potential impact of sales in such distressed areas. The Corporation shall not sell a real property asset located in a distressed area without obtaining at least the minimum disposition price, unless the chief executive officer, or his designees, determines that such a transaction furthers the three objectives set forth in paragraph (1) and the objective of this subsection.

"(5) DEFINITIONS.—For the purposes of this subsection:

"(A) The term 'minimum disposition price' means 95 percent of the market value established by the Corporation. The Oversight Board, in its discretion, may change the percentage set forth in this definition from time to time if the Oversight Board determines that such change does not adversely impact the objectives set forth in paragraph (1).

"(B) The term 'sell a real property asset' means to convey all title and interest in a piece of tangible real property in which the Corporation has a fee simple or equivalent interest. The term 'real property' does not include loans secured by real property, joint ventures, participation interests, options, or other similar interests. In addition, the term 'sell' does not include hypothecation of assets, issuance of asset backed securities, issuance of joint ventures, or participation interests, or other similar activities.

"(C) The term 'distressed area' means the geographic areas in those political subdivisions designated from time to time by the Oversight Board as having depressed real estate markets. Until the Oversight Board designates otherwise, such distressed areas shall be the States of Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, and Texas.

"(D) The term 'market value' means the most probable price which a property should bring in a competitive and open market if—

"(i) all conditions requisite to a fair sale are present,

"(ii) the buyer and seller are acting prudently and are knowledgable, and "(iii) the price is not affected by any undue stimulus.

"(u) Employees and Independent Contractors.—For purposes of this Act, employees of the Corporation and independent contractors of the Corporation shall be subject to conflict of interest rules and ethical standards no less stringent than those applicable to employees of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act. Such rules and standards shall be promulgated by the Oversight Board, and incorporated into all agreements with independent contractors. Independent contractors and employees of the Corporation shall be subject to the penalties applicable to employees of the Federal Deposit Insurance Corporation.

"(v) Role of Private Sector.—In carrying out the provisions of this section, the Corporation, the Federal Deposit Insurance Corporation, and the Oversight Board should utilize resources of private persons and entities for services, including real estate and loan portfolio asset management, property management, and brokerage, if such services are available in the private sector and utilization of such services would be practicable and efficient.".

Subtitle B—Resolution Funding Corporation

SEC. 502. RESOLUTION FUNDING CORPORATION ESTABLISHED.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 21A the following new section:

"SEC. 21B. RESOLUTION FUNDING CORPORATION ESTABLISHED.

"(a) Purpose.—The purpose of the Resolution Funding Corporation is to provide funds to the Resolution Trust Corporation to enable the Resolution Trust Corporation to carry out the provisions of this Act.

"(b) Establishment.—Notwithstanding any other provision of law, and not later than 5 days after the date of enactment of this section, the Chairman of the Office of Savings Associations is authorized and directed to charter a corporation to be known as the Resolution Funding Corporation (hereinafter referred to as the 'Funding Corporation').

"(c) Management of the Funding Corporation.—

"(1) Directorate.—The Funding Corporation shall be under the management of a Directorate composed of 3 members as follows:

"(A) The director of the Office of Finance of the Federal Home Loan Banks (or the head of any successor office); and

"(B) Two members selected by the Oversight Board from among the presidents of the Federal Home Loan Banks.

"(2) Terms.—Of the two members appointed under paragraph (1)(B), one shall be appointed for an initial term of two years and one shall be appointed for an initial term of three years. Thereafter, such member shall be appointed for a term of three years.

"(3) Vacancy.—If any member leaves the office in which such member was serving when appointed to the Directorate—

"(A) such member's service on the Directorate shall terminate on the date such member leaves such office; and

"(B) the successor to the office of such member shall serve the remainder of such member's term.

"(4) EQUAL REPRESENTATION OF BANKS.—No president of a Federal Home Loan Bank may be appointed to serve an additional term on the Directorate until such time as the presidents of each of the other Federal Home Loan Banks have served as many terms as the president of such bank.

"(5) CHAIRPERSON.—The Oversight Board shall select the chairperson of the Directorate from among the three members of the Directorate.

"(6) STAFF.—

"(A) NO PAID EMPLOYEES.—The Funding Corporation shall have no paid employees.

"(B) POWERS.—The Directorate may, with the approval of the Chairman of the Office of Savings Associations, authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Funding Corporation in such manner as may be necessary to carry out the functions of the Funding Corporation.

"(7) ADMINISTRATIVE EXPENSES.—

"(A) IN GENERAL.—All administrative expenses of the Funding Corporation, including custodian fees (as defined in subsection (k)(5) of this section), shall be paid by the Federal Home Loan Banks.

"(B) PRO RATA DISTRIBUTION.—The amount each Federal Home Loan Bank shall pay shall be determined by the Oversight Board by multiplying the total administrative expenses for any period by the percentage arrived at by dividing—

"(i) the aggregate amount the Oversight Board required such bank to invest in the Funding Corporation (as of the time of such determination) under paragraphs (4) and (5) of subsection (e) (computed without regard to paragraphs (3) or (6) of such subsection); by

"(ii) the aggregate amount the Oversight Board required all Federal Home Loan Banks to invest (as of the time of such determination) under such paragraphs.

"(C) ADMINISTRATIVE EXPENSES DEFINED.—For purposes of this paragraph, the term 'administrative expenses' does not include—

"(i) any interest on and any redemption premium with respect to any obligation of the Funding Corporation; or

"(ii) issuance costs (as defined in subsection (k)(4)).

"(8) REGULATION BY OVERSIGHT BOARD.—The Directorate of the Funding Corporation shall be subject to such regulations, orders, and directions as the Oversight Board may prescribe.

"(9) NO COMPENSATION FROM FUNDING CORPORATION.—Members of the Directorate of the Funding Corporation shall receive no pay, allowance, or benefit from the Funding Corporation for serving on the Directorate.

"(d) POWERS OF THE FUNDING CORPORATION.—The Funding Corporation shall have only the powers described in paragraphs (1) through (9), subject to the other provisions of this section and such regulations, orders, and directions as the Oversight Board may prescribe:

"(1) To issue nonvoting capital stock to the Federal Home Loan Banks;

"(2) To purchase capital certificates issued by the Resolution Trust Corporation under section 21A;

"(3) To issue debentures, bonds, or other obligations, and to borrow, to give security for any amount borrowed, and to pay interest on (and any redemption premium with respect to) any such obligation or amount;

"(4) To impose assessments in accordance with subsection (e)(7);

"(5) To adopt, alter, and use a corporate seal;

"(6) To have succession until dissolved;

"(7) To enter into contracts;

"(8) To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the Funding Corporation in any State or Federal court of competent jurisdiction; and

"(9) To exercise such incidental powers not inconsistent with the provisions of this section and section 21A as are necessary and appropriate to carry out the provisions of this section.

"(e) CAPITALIZATION OF THE FUNDING CORPORATION.—

"(1) PURCHASE OF CAPITAL STOCK BY FEDERAL HOME LOAN BANKS.—Each Federal Home Loan Bank shall invest in nonvoting capital stock of the Funding Corporation at such times and in such amounts as the Oversight Board may prescribe up to a maximum of $2,995,800,000 less any amounts required to be invested in the capital stock of the Financing Corporation after December 31, 1988.

"(2) PAR VALUE; TRANSFERABILITY.—Each share of stock issued by the Funding Corporation to a Federal Home Loan Bank shall have a par value in an amount determined by the Oversight Board and shall be transferable at not less than par value only among the Federal Home Loan Banks in the manner and to the extent prescribed by the Oversight Board.

"(3) MAXIMUM INVESTMENT AMOUNT LIMITATION FOR EACH FEDERAL HOME LOAN BANK.—The aggregate amount of funds invested in nonvoting capital stock of the Funding Corporation by each Federal Home Loan Bank shall not exceed the aggregate amount calculated under subparagraphs (A) and (B):

"(A) the sum of—

"(i) the reserves maintained by such bank on December 31, 1988, pursuant to the requirement contained in the first two sentences of section 16 of this Act; and

"(ii) the undivided profits (as defined in paragraph (8)) of such bank on such date; minus

"(I) the amounts (as of December 31, 1988) invested in the capital stock of the Financing Corporation pursuant to section 21 of this Act; and

"(II) the amount of any reserves that the Chairman of the Office of Savings Associations may, by regulation, require such bank to maintain in order to meet such bank's obligations pursuant to sections 18, 21(b)(7) and 21B(c)(7) of this Act; and

"(B) for the period December 31, 1988, through December 31, 1991, or such later date as may be necessary to fund the Funding Corporation Principal Fund (as described in subsection (g)(2)), the sum of—

"(i) the amounts added to reserves after December 31, 1988, pursuant to the requirement contained in the first two sentences of section 16 of this Act; and

"(ii) the undivided profits of such bank accruing after December 31, 1988; minus

"(I) the amounts used to invest in the capital stock of the Financing Corporation pursuant to the requirement contained in section 21 of this Act after December 31, 1988; and

"(II) the amount of any reserves that the Chairman of the Office of Savings Associations may, by regulation, require such bank to maintain in order to meet such bank's obligations pursuant to sections 18, 21(b)(7), and 21B(c)(7) of this Act and section 403 of the FIRRE Act; and

"(iii) in the event the aggregate amount for all Federal Home Loan Banks determined under this subparagraph is less than $300,000,000 per year, an additional amount determined by allocating the deficiency among the banks in accordance with the formula contained in paragraph (5).

"(4) PRO RATA DISTRIBUTION OF FIRST $1,000,000,000 INVESTED IN THE FUNDING CORPORATION BY THE FEDERAL HOME LOAN BANKS.—With respect to the first $1,000,000,000 in the aggregate which the Chairman of the Office of Savings Associations (pursuant to section 21) or the Oversight Board (under this section), may require the Federal Home Loan Banks to invest in the capital stock of the Financing Corporation or the Funding Corporation, the amount which each Federal Home Loan Bank (or any successor to such bank) shall invest shall be determined by the Chairman of the Office of Savings Associations or the Oversight Board, as the case may be, by applying to the aggregate amount of such investment by all banks the percentage appearing in the following table for each such bank:

"Bank	Percentage
Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422.

"(5) PRO RATA DISTRIBUTION OF AMOUNTS REQUIRED TO BE INVESTED IN EXCESS OF $1,000,000,000.—With respect to any amount in excess of $1,000,000,000 which the Oversight Board may require the Federal Home Loan Banks to invest in capital stock of the Funding Corporation under this subsection, the amount which each Federal Home Loan Bank (or any successor to such bank) shall invest shall be determined by the Oversight Board by multiplying such excess amount by the percentage arrived at by dividing—

"(A) the sum of the total assets (as of the most recent December 31) held by all insured savings associations which are members of such bank; by

"(B) the sum of the total assets (as of such date) held by all insured savings associations which are members of a Federal Home Loan Bank.

"(6) SPECIAL PROVISIONS RELATING TO MAXIMUM AMOUNT LIMITATIONS.—

"(A) IN GENERAL.—If the amount any Federal Home Loan Bank is required to invest in capital stock of the Funding Corporation under paragraph (5) exceeds the maximum investment amount applicable to such bank under paragraph (3) at the time of such determination (hereinafter the 'excess amount')—

"(i) the Oversight Board shall require each remaining Federal Home Loan Bank to invest (in addition to the amount determined under paragraph (5) for such remaining bank and subject to the maximum investment amount applicable with respect to such remaining bank under paragraph (3) at the time of such determination) in such capital stock on behalf of the bank in the amount determined under subparagraph (B);

"(ii) the Oversight Board shall require the bank to subsequently purchase the excess amount of capital stock from the remaining banks in the manner described in subparagraph (C); and

"(iii) the requirements contained in subparagraph (D) relating to the use of net earnings available for dividends shall apply to such bank until the bank has purchased all of the excess amount of capital stock.

"(B) ALLOCATION OF EXCESS AMOUNT AMONG REMAINING HOME LOAN BANKS.—

"(i) The amount each remaining Federal Home Loan Bank shall be required to invest under subparagraph (A)(i) is the amount determined by the Oversight Board by multiplying the excess amount by the percentage arrived at by dividing—

"(I) the amount of capital stock of the Funding Corporation held by such remaining bank at the time of such determination; by

"(II) the aggregate amount of such stock held by all remaining banks at such time.

"(ii) If the allocation under this subparagraph results in a remaining bank exceeding its maximum investment amount under paragraph (3), such excess amount shall be reallocated to the other remaining banks in accordance with this subparagraph.

"(C) PURCHASE PROCEDURE.—

"(i) The bank on whose behalf an investment in capital stock is made under subparagraph (A)(i) shall purchase stock annually from each remaining bank at a price equal to the issuance.

"(ii) The Oversight Board shall determine the dollar amount of such stock to be purchased from each remaining bank by multiplying the amount available for such purchases (at the time of such determination) by the percentage determined under subparagraph (B) with respect to such remaining bank until the aggregate amount of such capital stock has been purchased by the bank.

"(D) TRANSFER TO ACCOUNT FOR THE PURCHASE OF STOCK REQUIRED.—Of the net earnings available for dividends for any year of a bank on whose behalf an investment is made under subparagraph (A)(i), up to a maximum of 20 percent of such earnings, such amount as is necessary to make the purchases of stock required under subparagraph (A)(ii) shall be placed in a reserve account (established in such manner as the Oversight Board shall prescribe by regulations) the balance of which shall be available only for such purchases.

"(E) NET EARNINGS AVAILABLE FOR DIVIDENDS DEFINED.—For purposes of this paragraph, the term 'net earnings available for dividends' means the net earnings of a bank for any period as computed before reducing the amount of earnings for such period by the amount required to purchase capital stock under paragraph (4) or (5) or under subparagraph (A) or (C) of this paragraph.

"(7) ADDITIONAL SOURCES.—In the event that each Federal Home Loan Bank has exhausted the investment amount applicable with respect to such bank under paragraph (3) with respect to investments under paragraphs (4), (5), and (6), then the amounts necessary to provide additional funding for the Funding Corporation Principal Fund shall be obtained as follows:

"(A) First, the Funding Corporation, with the approval of the Board of Directors of the Federal Deposit Insurance Corporation, shall assess each Savings Association Insurance Fund member an assessment in the same manner the Federal Deposit Insurance Corporation assesses such members under section 7 of the Federal Deposit Insurance Act. The maximum amount of the aggregate assessment shall be the amount of additional funds necessary to fund the Funding Corporation Principal Fund. However, the amount assessed under this subparagraph and the amount assessed by the Financing Corporation under section 21 shall not exceed the amount authorized to be assessed under section 7 of the Federal Deposit Insurance Act. The Financing Corporation shall have first priority to make such assessments and all such amounts shall be subtracted from the amounts authorized to be assessed by the Federal Deposit Insurance Corporation under section 7 of the Federal Deposit Insurance Act.

"(B) To the extent funds available pursuant to subparagraph (A) are insufficient to capitalize the Funding Corporation and to provide funds for the Funding Corporation Principal Fund, the Federal Deposit Insurance Corporation shall transfer to the Funding Corporation from the receivership proceeds of the FSLIC Resolution Fund, the remaining amount of funds necessary for such purpose.

"(8) UNDIVIDED PROFITS DEFINED.—For purposes of paragraph (3), the term 'undivided profits' means retained earnings minus the sum of—

"(A) that portion required to be added to reserves maintained pursuant to the first two sentences of section 16; and

"(B) the dollar amounts held by the respective Federal Home Loan Banks in special dividend stabilization reserves on December 31, 1985, as determined by the table set forth in section 21(d)(7).

"(f) OBLIGATIONS OF THE FUNDING CORPORATION.—

"(1) ISSUANCE.—The Funding Corporation, subject to the direction of the Resolution Trust Corporation, may issue bonds, notes, debentures, and similar obligations, in an aggregate amount not to exceed $50,000,000,000.

"(2) INTEREST PAYMENTS.—The Funding Corporation shall pay the interest due on (and any redemption premium with respect to) such obligations from funds obtained for such interest payments from the following sources.

"(A) The Resolution Trust Corporation shall pay to the Funding Corporation—

"(i) the net proceeds received by the Resolution Trust Corporation from the liquidation of institutions under its management (pursuant to section 21A) to the extent such proceeds are determined by the Oversight Board to be in excess of funds necessary for resolution costs, and

"(ii) any proceeds from warrants and participations of the Resolution Trust Corporation; and

"(B) To the extent the funds available pursuant to subparagraph (A) are insufficient to cover the amount of interest payments, then the Federal Home Loan Banks shall pay to the Funding Corporation the aggregate annual amount of $300,000,000 minus the amounts needed by the Financing Corporation (pursuant to section 21) and the amounts needed to purchase Funding Corporation capital certificates. Each bank's individual share of any amounts required to be paid by the Federal Home Loan Banks under this subparagraph shall be determined as follows, subject to the procedures and limitations of paragraphs (3), (4), and (6) of subsection (e):

"(i) Each Federal Home Loan Bank shall pay an equal percentage of its net earnings for the year for which such amount is required to be paid, up to a maximum of 20 percent of net earnings.

"(ii) To the extent that the aggregate amount required to be paid by the Federal Home Loan Banks under this subparagraph for any year exceeds 20 percent of the aggregate net earnings of the Federal Home Loan Banks for such year, each bank shall pay 20 percent of its net earnings for such year as provided in clause (i), and each bank's individual share of the excess of the required amount over 20 percent of the aggregate net earnings of the Federal Home Loan Banks for such year shall be determined by dividing—

"(I) the average month-end level of advances made in the prior year by such bank to Savings Associations Insurance Fund members; by

"(II) the average month-end level of advances made in the prior year by all Federal Home Loan Banks to Savings Associations Insurance Fund members.

"(C) The proceeds of all net assets of the Resolution Trust Corporation, upon its dissolution, which shall be transferred to the Funding Corporation; and

"(D) Notwithstanding any other provision of this Act, to the extent that the Directorate determines, after consultation with and approval by the Secretary of the Treasury, that the Funding Corporation is unable to pay the interest on any obligation issued under this subsection from the sources described in subparagraphs (A), (B), and (C), the Secretary of the Treasury shall pay to the Funding Corporation the additional amount due which shall be used by the Funding Corporation to pay such interest. In each such instance where the Secretary of the Treasury is required to make a payment under this subparagraph, the amount of the payment shall become a liability of the Funding Corporation to be repaid to the Secretary of the Treasury upon dissolution of the Funding Corporation to the extent that the Funding Corporation may have any remaining assets. There are hereby appropriated to the Secretary of the Treasury, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out this paragraph.

"(3) PRINCIPAL PAYMENTS.—On maturity of an obligation issued under this subsection, the obligation shall be repaid by the Funding Corporation from the liquidation of noninterest bearing instruments held in the Funding Corporation Principal Fund. The Funding Corporation shall obtain funds for such Principal Fund pursuant to subsection (e). All of such funds shall be invested in noninterest bearing instruments described in subsection (g)(1).

"(4) PROCEEDS TO BE INVESTED IN CAPITAL CERTIFICATES OF THE RESOLUTION TRUST CORPORATION.—Subject to such terms and conditions as may be approved by the Oversight Board, the proceeds (less any discount, plus any premiums, and net of issuance costs) of any obligation issued by the Funding Corporation shall be used to—

"(A) purchase the capital certificates issued by the Resolution Trust Corporation under section 21A of this Act; or

"(B) refund any previously issued obligation the proceeds of which were invested in the manner described in subparagraph (A).

"(5) INVESTMENT OF UNITED STATES FUNDS IN OBLIGATIONS.—Obligations issued under this section by the Funding Corporation, at the direction of the Oversight Board shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer of the United States.

"(6) MARKET FOR OBLIGATIONS.—All persons having the power to invest in, sell, underwrite, purchase for their own accounts, accept as security, or otherwise deal in obligations of the Federal Home Loan Banks shall also have the power to do so with respect to obligations of the Funding Corporation.

"(7) TAX EXEMPT STATUS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), obligations of the Funding Corporation shall be exempt from tax both as to principal and interest to the same extent as any obligation of a Federal Home Loan Bank is exempt from tax under section 13 of this Act.

"(B) EXCEPTION.—The Funding Corporation, like the Federal Home Loan Banks, shall be treated as an agency of the United States for purposes of the first sentence of section 3124(b) of title 31, United States Code (relating to determination of tax status of interest on obligations).

"(8) OBLIGATIONS ARE EXEMPT SECURITIES.—Notwithstanding paragraph (10), obligations of the Funding Corporation shall be deemed to be exempt securities (within the meaning of the laws administered by the Securities and Exchange Commission) to the same extent as securities which are direct obligations of the United States or are guaranteed as to principal or interest by the United States.

"(9) MINORITY PARTICIPATION IN PUBLIC OR NEGOTIATED OFFERINGS.—The Oversight Board and the Directorate shall ensure that minority owned or controlled commercial banks, investment banking firms, underwriters, and bond counsels throughout the United States have an opportunity to participate to a significant degree in any public or negotiated offering of obligations issued under this section.

"(10) NO FULL FAITH AND CREDIT OF THE UNITED STATES.—Obligations of the Funding Corporation shall not be obligations of, or guaranteed as to principal by, the Federal Home Loan Bank System, the Federal Home Loan Banks, the United States, or the Resolution Trust Corporation and the obligations shall so plainly state. The Secretary of the Treasury shall pay interest on such obligations as required pursuant to this subsection.

"(g) USE AND DISPOSITION OF ASSETS OF THE FUNDING CORPORATION NOT INVESTED IN RESOLUTION TRUST CORPORATION.—

"(1) IN GENERAL.—Subject to such regulations, restrictions, and limitations as may be prescribed by the Oversight Board, assets of the Funding Corporation, which are not required to be invested in capital certificates issued by the Resolution Trust Corporation under section 21A of this Act and which are not needed for current interest payments, shall be invested in—

"(A) direct obligations of the United States;

"(B) obligations, participations, or other instruments of, or issued by, the Federal National Mortgage Association or the Government National Mortgage Association;

"(C) mortgages, obligations, or other securities for sale by, or which have been disposed of by, the Federal Home Loan Mortgage Corporation under section 305 or 306 of the Federal Home Loan Mortgage Corporation Act; or

"(D) any other security in which it is lawful for fiduciary and trust funds to be invested under the laws of any State.

"(2) SEGREGATED ACCOUNT FOR ZERO COUPON INSTRUMENTS HELD TO ASSURE PAYMENT OF PRINCIPAL.—The Funding Corporation shall invest funds from sources specified in subsection (e) in, and hold in a segregated account (the 'Funding Corporation Principal Fund'), noninterest bearing instruments—

"(A) which are securities described in paragraph (1); and

"(B) the total of the face amounts (the amount of principal payable at maturity) of which is approximately equal to the aggregate amount of principal on the obligations of the Funding Corporation.

"(3) EARNINGS ON CERTAIN ASSETS.—All earnings on assets that are invested pursuant to paragraph (1) and not pursuant to paragraph (2) shall be used before the funds described in subsection (f)(2) to make interest payments on Funding Corporation obligations when interest is due.

For purposes of the foregoing, the Funding Corporation shall be deemed to hold noninterest bearing instruments that it may lend temporarily to primary United States Treasury dealers in order to enhance market liquidity and facilitate deliveries, provided that United States Treasury securities of equal or greater value have been delivered as collateral.

"(h) MISCELLANEOUS PROVISIONS RELATING TO THE FUNDING CORPORATION.—

"(1) TREATMENT FOR CERTAIN PURPOSES.—Except as provided in subsection (f)(7)(B), the Funding Corporation shall be treated as a Federal Home Loan Bank for purposes of sections 13 and 23.

"(2) FEDERAL RESERVE BANKS AS DEPOSITARIES AND FISCAL AGENTS.—The Federal Reserve banks are authorized to act as depositaries for or fiscal agents or custodians of the Funding Corporation.

"(3) APPLICABILITY OF CERTAIN PROVISIONS RELATING TO GOVERNMENT CORPORATIONS.—The Funding Corporation shall be treated, for purposes of sections 9105, 9107, and 9108 of title 31, United States Code, as a mixed-ownership Government corporation which has capital of the Government.

"(4) JURISDICTION AND POWER TO REMOVE.—

"(A) Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Funding Corporation is a party shall be deemed to arise under the laws of the United States, and the United States District Court for the District of Columbia shall have original jurisdiction over such action, suit, or proceeding.

"(B) The Funding Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia.

"(5) ANNUAL REPORTS ON THE FUNDING CORPORATION.—

"(A) IN GENERAL.—The Funding Corporation shall annually submit a full report of its operations, activities, budget, receipts, and expenditures for the preceding 12-month period. The report shall include—

"(i) audited statements of financial position, income and expense, and cash flow, an analysis of surplus or deficit, and such additional statements and information as necessary to make known the financial condition and operations of the Corporation in accordance with generally accepted accounting principles; and

"(ii) the Corporation's financial operating plans and forecasts (including estimates of actual and future spending, and estimates of actual and future noncash obligations) taking into account the Corporation's financial commitments, guarantees and other contingent liabilities.

"(B) SUBMISSION.—The report, including the results of the audit conducted pursuant to paragraph (6), shall be submitted to the President of the Senate and the Speaker of the House of Representatives, who shall cause the same to be printed for the information of Congress, and to the President as soon as practicable after the first day of January each year but not later than 6 months after the close of the 12-month period covered by the report.

"(6) INDEPENDENT AUDITS.—The financial statements of the Resolution Funding Corporation shall be audited annually by an independent certified public accountant in accordance with generally accepted government auditing standards.

"(i) TERMINATION OF THE FUNDING CORPORATION.—

"(1) IN GENERAL.—The Funding Corporation shall be dissolved, as soon as practicable, after the maturity and full payment of all obligations issued by the Funding Corporation under this section.

"(2) OVERSIGHT BOARD AUTHORITY TO CONCLUDE THE AFFAIRS OF THE FUNDING CORPORATION.—Effective on the date of the dissolution of the Funding Corporation under paragraph (1), the Oversight Board may exercise on behalf of the Funding Corporation, any power of the Funding Corporation which the Oversight Board determines to be necessary to settle and conclude the affairs of the Funding Corporation.

"(j) REGULATIONS.—The Oversight Board may prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations defining terms used in this section.

"(k) **Definitions.**—For purposes of this section—

"(1) **Insured savings association.**—The term 'insured savings association' means a savings association as such term is defined by section 7(l) of the Federal Deposit Insurance Act.

"(2) **Oversight board.**—The term 'Oversight Board' means the Oversight Board of the Resolution Trust Corporation under section 21A, and after the termination of such Corporation, the term shall mean the Secretary of the Treasury, the Chairman of the Federal Reserve Board and the Attorney General.

"(3) **Directorate.**—The term 'Directorate' means the Directorate established in the manner provided in subsection (c)(1) to manage the Funding Corporation.

"(4) **Issuance costs.**—The term 'issuance costs'—

"(A) means issuance fees and commissions incurred by the Funding Corporation in connection with the issuance or servicing of any obligations of the Funding Corporation; and

"(B) includes legal and accounting expenses, trustee and fiscal paying agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses, to the extent that any such costs or expense is incurred by the Funding Corporation in connection with issuing any obligation.

"(5) **Custodian fee.**—The term 'custodian fee' means—

"(A) any fee incurred by the Funding Corporation in connection with the transfer of any security to, or the maintenance of any security in, the segregated account established under subsection (g); and

"(B) any other expense incurred by the Funding Corporation in connection with the establishment or maintenance of such account.".

SEC. 503. FINANCING CORPORATION.

Section 21 of the Federal Home Loan Bank Act (12 U.S.C. 1441) is amended—

(1) by striking the term "insured institution" each place it appears and inserting "insured savings association";

(2) by striking the term "institution" each place it appears and inserting "savings association";

(3) by striking the term "Federal Home Loan Bank Board" and the term "Board" each place such terms appear and inserting "Chairman of the Office of Savings Associations;

(4) in subsection (c)(2) by inserting "prior to the date of the enactment of the FIRRE Act and thereafter by the FSLIC Resolution Fund" before the period;

(5) in subsection (c)(9) by striking out "or section 402(b) of the National Housing Act";

(6) in subsection (e)(3)(A) by inserting "prior to the enactment of the FIRRE Act, and thereafter purchase capital certificates or capital stock issued by the FSLIC Resolution Fund" before the semicolon;

(7) in subsection (e)—

(A) by striking paragraph (2) and redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively, and

(B) in paragraph (6) as redesignated, by striking "the Federal Savings and Loan Insurance Corporation" and inserting "the FSLIC Resolution Fund" in lieu thereof;

(8) by striking subsection (f) and inserting the following:

"(f) SOURCES OF FUNDS FOR INTEREST PAYMENTS; FINANCING CORPORATION ASSESSMENT AUTHORITY.—The Financing Corporation shall obtain funds for interest payments on obligations issued hereunder from the following sources:

"(1) The Financing Corporation assessments which were assessed on insured institutions pursuant to this section as in effect prior to the date of enactment of the FIRRE Act;

"(2) The Financing Corporation, with the approval of the Board of Directors of the Federal Deposit Insurance Corporation, shall make assessments on each Savings Association Insurance Fund member in the same manner as assessments are made by the Federal Deposit Insurance Corporation with respect to Savings Association Insurance Fund members under section 7 of the Federal Deposit Insurance Act. The amount assessed hereunder and the amount assessed by the Funding Corporation under section 21B shall not exceed the amount authorized to be assessed pursuant to section 7 of the Federal Deposit Insurance Act, and the Financing Corporation shall have first priority to make such assessments. All assessments made by the Financing Corporation under this section and by the Funding Corporation under section 21B shall be subtracted from the amounts authorized to be assessed by the Federal Deposit Insurance Corporation pursuant to section 7 of the Federal Deposit Insurance Act; and

"(3) To the extent the funds available pursuant to paragraphs (1) and (2) are insufficient to cover the amount of interest payments, and if the funds are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal Fund under section 21B, the Federal Deposit Insurance Corporation shall transfer to the Financing Corporation from the proceeds of the FSLIC Resolution Fund (established under section 11A of the Federal Deposit Insurance Act) the remaining amount of funds necessary for the Financing Corporation to make interest payments.";

(9) in subsection (g)(1) by striking "National Housing Act," and inserting "National Housing Act before the date of enactment of the FIRRE Act and after such date in capital certificates issued by the FSLIC Resolution Fund,";

(10) in subsection (g), by inserting the following at the end of paragraph (2): "For purposes of the foregoing, the Financing Corporation shall be deemed to hold noninterest bearing instruments that it lends temporarily to primary United States Treasury dealers in order to enhance market liquidity and facilitate deliveries, provided that United States Treasury securities of equal or greater value have been delivered as collateral.";

(11) in subsection (j), by striking subparagraph (A) of paragraph (1) and inserting the following:

"(A) the maturity and full payment of all obligations issued by the Financing Corporation pursuant to this section; or"; and

(12) in subsection (l)—

(A) by striking paragraph (1) and inserting the following:

"(1) INSURED SAVINGS ASSOCIATION.—The term 'insured savings association' means a savings association as defined by section 7(l) of the Federal Deposit Insurance Act."; and

(B) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

SEC. 504. MIXED OWNERSHIP GOVERNMENT CORPORATION.

Section 9101(2) of title 31, United States Code, is amended by adding at the end thereof the following new subparagraphs:

"(L) the Resolution Funding Corporation.

"(O) the Resolution Trust Corporation.".

SEC. 505. FEDERAL HOME LOAN BANK RESERVES.

(a) IN GENERAL.—Section 16(a) of the Federal Home Loan Bank Act (12 U.S.C. 1436(a)) is amended—

(1) by striking the first three sentences and inserting in lieu thereof: "Each Federal Home Loan Bank may carry to a reserve account from time-to-time such portion of its net earnings as may be determined by its board of directors. If the reserve accounts of a bank established pursuant to this section reach 100 percent of the paid-in capital of the bank but are subsequently reduced below such amount, such reserves shall be restored to 100 percent of the paid-in capital of the bank before any dividends are paid."; and

(2) by inserting at the end of section 16(a) the following: "For the purpose of this section, net earnings shall be computed without reduction by any charge or expense incurred by a bank in connection with the bank's investment in the Funding Corporation under section 21(B).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall take effect on January 1, 1992.

TITLE VI—THRIFT ACQUISITION ENHANCEMENT PROVISIONS

SEC. 601. ACQUISITION OF THRIFTS BY BANK HOLDING COMPANIES.

Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end thereof the following new subsection:

"(i) ACQUISITION OF SAVINGS ASSOCIATIONS.—Beginning on the date which is two years after the date of the enactment of the FIRRE Act, the Board may approve an application by a bank holding company under subsection (c)(8) to acquire any savings association pursuant to the requirements and limitations of this section. The Board may immediately approve an application by a bank holding company under subsection (c)(8) (pursuant to the requirements and limitations of this section) to acquire a saving association that does not meet the capital standards prescribed by the Chairman of the Office of Savings Associations, or that, excluding goodwill, has less than 2 percent tier 1 capital. In approving an application by a bank holding company to acquire a savings association, the Board shall not impose restrictions on transactions between the savings association and its holding company affiliates, except as required under the provisions of sections 23A and 23B of the Federal Reserve Act or other applicable statute. The Board shall modify any orders authorizing the acquisition of a savings association by a bank holding company in a manner consistent with the preceding sentence.".

SEC. 602. INVESTMENTS BY SAVINGS AND LOAN HOLDING COMPANIES IN UNAFFILIATED THRIFT INSTITUTIONS.

Section 10(e)(1)(A)(iii) of the Home Owners' Loan Act of 1933, as amended by section 301 of this Act, is amended to read as follows:

"(iii) to acquire, by purchase or otherwise, or to retain more than 5 percent of the voting shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary, or in the case of a multiple savings and loan holding company, to so acquire or retain more than 5 percent of the voting shares of any company not a subsidiary which is engaged in any business activity other than those specified in subsection (c)(2). This subparagraph shall not apply to shares of a savings association or of a savings association holding company—

"(I) held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

"(II) held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

"(III) held in an account solely for trading purposes or over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

"(IV) acquired in securing or collecting a debt previously contracted in good faith, for two years after the date of acquisition or for such additional time (not exceeding 3 years) as the Chairman may permit if, in the Chairman's judgment, such an extension would not be detrimental to the public interest;

"(V) acquired under section 13(k)(1)(A)(i) of the Federal Deposit Insurance Act; or

"(VI) shares held by insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940, so long as all shares held under this subclause do not in the aggregate exceed 1 percent of any class of such shares.".

SEC. 603. TECHNICAL AMENDMENT TO THE BANK HOLDING COMPANY ACT.

Section (2)(j) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(j)) is amended to read as follows:

"(j) INSURED INSTITUTION; SAVINGS ASSOCIATION.—For purposes of this Act, the terms 'insured institution' and 'savings association' have the meaning given to the term 'savings association' in section 10(a)(1)(A) of the Home Owners' Loan Act of 1933.".

TITLE VII—FEDERAL HOME LOAN BANK SYSTEM REFORMS

Subtitle A—Federal Home Loan Bank Act Amendments

SEC. 701. DEFINITIONS.

(a) IN GENERAL.—Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended—

(1) by striking paragraphs (1) and (2) and inserting the following:

"(1) The term 'Agency' means the 'Federal Home Loan Bank Agency' established under section 17.

"(2)(A) The term 'Federal Home Loan Bank' or 'Bank' means a bank established under the authority of this Act.

"(B) The term 'Federal Home Loan Bank System' means the Federal Home Loan Banks and their joint offices, under the supervision of the Agency.";

(2) in paragraph (4), by striking "(except when used in reference to the member of the board)"; and

(3) by adding at the end the following:

"(10) The term 'savings association' has the same meaning as in section 2(c) of the Home Owners Loan Act of 1933 (12 U.S.C. 1462(c)).".

(b) CHANGE IN TERMS.—

(1) IN GENERAL.—The Federal Home Loan Bank Act is amended by striking "Federal Home Loan Bank Board", "Board", and "board" each place they appear and inserting "Federal Home Loan Bank Agency", "Agency", and "Agency", respectively.

(2) EXCEPTIONS.—The amendments made by subsection (a) shall not apply to sections 21, 21A, and 21B, of the Federal Home Loan Bank Act.

(c) TECHNICAL AMENDMENTS.—(1) Section 11(e)(2)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1431(e)(2)(C)) is amended by inserting "Federal Home Loan" before "Banks,"; and

(2) The first sentence in the third paragraph of section 11(i) of such Act is amended by inserting "Federal" before "Home Loan Bank System".

SEC. 702. FEDERAL HOME LOAN BANK AGENCY.

Section 17 of the Federal Home Loan Bank Act (12 U.S.C. 1437) is amended to read as follows:

"SEC. 17. FEDERAL HOME LOAN BANK AGENCY.

"(a) IN GENERAL.—There is established as an independent agency in the executive branch the Federal Home Loan Bank Agency. The Agency shall supervise the Federal Home Loan Banks and shall promulgate and enforce such rules, regulations, and orders, as are necessary from time to time for carrying out the provisions of this Act and all other laws it is his duty to implement.

"(b) FUNCTION.—The function of the Agency shall be to ensure that the Federal Home Loan Banks carry out their housing finance mission, that the Federal Home Loan Banks remain adequately capitalized and able to raise funds in the capital markets, and that the Federal Home Loan Banks operate in a safe and sound manner.

"(c) APPOINTMENT.—

"(1) IN GENERAL.—The Agency shall be under the direction of a Board of Directors consisting of a President and 2 other members, all of whom shall be citizens of the United States, shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold office for a term of 6 years. No member of the Board of Directors shall hold any other appointive office during his or her term as a Director. Not more than 2 members of the Board of Directors shall be members of the same political party.

"(2) QUALIFICATIONS.—The Board of Directors shall be appointed from among persons with extensive experience or training in housing finance and with a commitment to the provision of specialized housing credit.

"(3) CONTINUED SERVICE UNTIL SUCCESSOR APPOINTED.—Each member of the Board of Directors may continue to serve until a successor has been appointed and qualified.

"(d) APPOINTMENT OF STAFF.—Subject to title IV of the FIRRE Act, the Agency may employ, direct, and fix the compensation of such employees, attorneys and agents as it deems necessary to carry out its duties, except that in no event shall the Agency delegate any function to any employee or administrative unit of any Federal Home Loan Bank. In directing and fixing such compensation, the Agency shall consult with and maintain comparability with the compensation at the other Federal bank regulatory agencies. Notwithstanding any other provision of this Act, no officer, employee, or agent of the Banks shall be a Federal officer or employee under any definition of either term in section 2104, 2105, 5331, 5541, 5561, 5701, 7103, 8101, 8311, 8331, or any other provision of title 5, United States Code. Any person appointed as agent of the Agency by the Agency shall be deemed an 'employee of the Government' solely for the purpose of section 2671 of title 28, United States Code.

"(e) SUSPENSION AND REMOVAL.—The Agency may suspend or remove for cause a director, officer, employee, or agent of any Federal Home Loan Bank or administrative unit thereof. The cause of such suspension or removal shall be communicated in writing forthwith to such director, officer, employee, or agent and to such Bank or administrative unit.

"(f) SALARIES AND EXPENSES.—The salaries of the Board of Directors and other employees of the Agency and all other expenses thereof may be paid from assessments levied on the Federal Home Loan Banks pursuant to section 18 of this Act, and the funds derived from such assessments may be deposited by the Agency in the same manner as authorized under section 5240 of the Revised Statutes and shall not be construed to be Government Funds or appropriated monies, or subject to apportionment for the purposes of chapter 15 of title 31 or any other authority. Such compensation shall be paid without regard to the provisions of other laws applicable to officers or employees of the United States, except that the President and other Directors shall be compensated as prescribed in sections 5314 and 5315 of title 5, United States Code.

"(g) FINANCIAL INTEREST.—It shall not be lawful for the President or the Directors of the Agency to have a financial interest, either directly or indirectly, in any member of a Federal Home Loan Bank.

"(h) ANNUAL REPORT.—The Agency shall make an annual report to the Congress.".

SEC. 703. SHAREHOLDER ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—The first sentence of section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) is amended by striking "or savings bank," and inserting "savings bank, any other insured financial institution (as defined in section 3(h) of the Federal Deposit Insurance Act), or any credit union whose accounts are insured by the National Credit Union Administration Board under the Federal Credit Union Act".

(b) QUALIFIED THRIFT LENDER.—The last sentence of section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) is amended to read as follows: "No insured financial institution that is not a member on January 1, 1989, shall become a member of a Federal Home Loan Bank if the insured financial institution is not a qualified thrift lender pursuant to section 10(e) or, in the judgment of the Agency, the insured financial institution's financial condition is such that advances may not safely be made to such institution, or the character of its management or its home-financing policy is inconsistent with sound and economical home financing or with the purposes of this Act.".

(c) REPEALER.—Section 27 of the Federal Home Loan Bank Act (12 U.S.C. 1447) is repealed.

SEC. 704. CAPITAL STOCK.

Section 6 of the Federal Home Loan Bank Act (12 U.S.C. 1426) is amended—

(1) by striking subsections (a), (e), (f), and (g), and redesignating the remaining subsections as (a) through (h), respectively; and

(2) by placing a period after "canceled" in the second sentence of redesignated subsection (e), and by striking "except that in the case of a voluntary withdrawal," and inserting "Any".

SEC. 705. ELECTION OF BANK DIRECTORS.

Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) is amended—

(1) by inserting after the last sentence of subsection (a) the following: "Two of the directors appointed by the Agency shall be selected based on their qualifications as consumer or moderate income community interest representatives.";

(2) by inserting after the first sentence of subsection (b) the following: "No person who is an officer or director of a member

that fails to meet its capital requirement as set by the appropriate Federal regulatory agency may seek, or hold, the office of director of a Federal Home Loan Bank."; and

(3) by adding at the end the following:

"(i) The directors of each Bank shall determine the terms and conditions under which the Bank may indemnify its directors, officers, employees, or agents.

SEC. 706. STUDIES OF VALUES.

Section 8 of the Federal Home Loan Bank Act (12 U.S.C. 1428) is amended to read as follows:

"SEC. 8. STUDIES OF VALUES.

"The banks or the Agency may make studies of trends of home and other property values, methods of appraisals, and other subjects such as they may deem useful for the general guidance of their policies and operations and those of the Bank members.".

SEC. 707. ELIGIBILITY OF BORROWERS TO SECURE ADVANCES.

(a) In General.—Section 9 of the Federal Home Loan Bank Act (12 U.S.C. 1429) is amended by striking "or nonmember borrower" in the first sentence.

(b) Conforming Amendments.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended—

(1) in sections 2(5) and 4(b), by striking "or a nonmember borrower" wherever it appears;

(2) by striking section 2(9);

(3) in section 4(a), by striking ", or a nonmember borrower of," wherever it appears;

(4) in section 5, by striking ", or granted the privileges of nonmember borrowers,";

(5) in section 6(i) (as redesignated by section 705 of this Act), by striking ", or deprive any nonmember borrower of the privilege of obtaining further advances," in the first sentence;

(6) in section 6(e) as redesignated by section 705, by striking "or deprive any nonmember borrower of the privilege of further advances,";

(7) in sections 6(e) (as redesignated by section 705), 7(j), and 10(c), by striking "or nonmember borrower" wherever it appears;

(8) in section 10(c), by striking ", or made to a nonmember borrower" in the second sentence; and

(9) in sections 11(g) and 11(h), by striking "or nonmember borrowers" wherever it appears.

SEC. 708. FEDERAL HOME LOAN BANK LENDING.

Section 11(k) of the Federal Home Loan Bank Act (12 U.S.C. 1431(k)) is amended to read as follows:

"(k) The Federal Home Loan Banks are hereby authorized, as directed by the Federal Deposit Insurance Corporation with the concurrence of the Agency, to make loans to such Corporation for the use of the Savings Association Insurance Fund, which loans shall be a direct liability of such Fund. Interest on such loans from the Federal Home Loan Banks shall not be less than their current marginal cost of funds, taking into account the maturities involved.

Such loans shall be adequately secured as determined by the Agency.".

SEC. 709. THRIFT ADVISORY COUNCIL.

Section 8a of the Federal Home Loan Bank Act (12 U.S.C. 1428a) is repealed.

SEC. 710. FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION INDUSTRY ADVISORY COMMITTEE.

Subsection (i) of section 21 of the Federal Home Loan Bank Act (12 U.S.C. 1441) is repealed, and subsections (k) and (l) are redesignated as subsections (j) and (k), respectively.

SEC. 711. RATE OF INTEREST.

Section 5B of the Federal Home Loan Bank Act (12 U.S.C. 1425b) is repealed.

SEC. 712. ADVANCES.

(a) In General.—Subsection (a) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended by striking everything after "members" to the end of the section and replacing it with the following: "upon collateral sufficient, in the judgment of such Bank, to fully secure advances obtained from the Bank under this section, or section 11(g) of this Act. All long term advances shall be made only for the purpose of providing funds for housing finance. A Bank, at the time of origination or renewal of a loan or advance, shall obtain and maintain a security interest in collateral eligible pursuant to one or more of the following categories:

"(1) fully disbursed, whole first mortgages on improved residential property, not more than 90 days delinquent;

"(2) securities issued, insured, or guaranteed by the United States Government or any agency thereof (including without limitation, mortgage-backed securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Corporation, and the Government National Mortgage Association);

"(3) deposits of a Federal Home Loan Bank; or

"(4) other real-estate related collateral acceptable to the Bank if such collateral has a readily ascertainable value and that the Bank can perfect its interest in the collateral. The aggregate amount of outstanding advances secured by such other real-estate related collateral, to any one member, shall not exceed 30 percent of that member's capital.

Paragraphs (1) through (4) shall not affect the ability of any Federal Home Loan Bank to take such steps as it deems necessary to protect its security position as to outstanding advances, including but not limited to requiring deposits of additional collateral security, whether or not such additional security would be eligible to originate an advance.".

(b) Conforming Amendments.—Subsection (e) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended—

(1) by striking "insured institution" and inserting "savings association";

(2) in paragraph (1)—

(A) by striking "(A)" and inserting "(i)",

(B) by inserting "(A)" before "Except",

(C) by striking "(B)" and inserting "(ii)",

(D) by adding at the end the following:

"(B) Notwithstanding subparagraph (A), no member may receive any advances at any time that its actual thrift investment percentage is less than 60 percent. A member who does not meet the requirement contained in the preceding sentence may nonetheless receive advances if and only if such member purchases and maintains stock in its Federal Home Loan Bank in the amount that would be required if at least 60 percent of its assets were in home mortgage loans. The determination regarding meeting the requirement of the first sentence of this subparagraph shall be made by the Agency and the Chairman of the Office of Savings Associations or, in the event of a disagreement in any case, by the Secretary of the Treasury.";

(3) in paragraph (3)(A), by striking "section 408(a)(1)(A) of the National Housing Act" and inserting "section 10(a)(1)(A) of the Homeowners' Loan Act of 1933";

(4) in paragraph (3)(B), by striking "section 408(o) of the National Housing Act" and inserting "section 10(m) of the Homeowners' Loan Act of 1933"; and

(5) by striking paragraph (3)(C) and inserting the following:

"(C) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term 'actual thrift investment percentage' has the same meaning as in section 10(m) of the Home Owners' Act of 1933 and, in the case of a depository member that is not a 'savings association' within the meaning of such section, shall be computed as if the term 'savings association' includes such member.".

SEC. 713. EXAMINATIONS.

Section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440) is amended by adding at the end the following: "In addition to such examinations, the Comptroller General shall, from time to time, audit or examine the Agency, the Banks, and any administrative unit thereof to determine the extent to which the Agency and the Banks are fairly and effectively fulfilling the purposes of this Act.".

SEC. 714. CONFORMING FEDERAL HOME LOAN BANK ACT AMENDMENTS.

(a) IN GENERAL.—The Federal Home Loan Bank Act is amended—

(1) by striking subsection (a) of section 18;

(2) in section 18(c)(5) (12 U.S.C. 1438(c)(5)), by striking all after "receipts of the board" and inserting a period;

(3) in subsection (b) of section 18—

(A) by striking "its" the first place it appears and inserting "his or her";

(B) by striking "its" the second place it appears and inserting "the Agency's";

(C) by striking "All expenses" and inserting "Any expenses"; and

(D) by striking "shall be paid" and inserting "may be paid";

(4) in section 18(c)(6), by striking all after "budget program" up to ", and (B)";

(5) by striking the last sentence of section 19; and

(6) in section 21(b)(5), by striking "of the Federal Home Loan Bank Board".

(b) OTHER CONFORMING AMENDMENTS.—(1) Section 101 of title I of the Act of June 16, 1943 (12 U.S.C. 1439a) is amended by striking everything after "Federal Home Loan Bank Administration" and inserting a period.

(2) Section 111 of title I of Public Law 93-495 (12 U.S.C. 250) is amended by striking "the Federal Home Loan Bank Board".

SEC. 715. LIQUIDITY.

Section 5A of the Federal Home Loan Bank Act (12 U.S.C. 1425a) is repealed.

SEC. 716. TRANSFERS.

The Chairman of the Office of Savings Associations and the Federal Home Loan Bank Agency shall jointly provide for—

(1) the transfer of employees of the Federal Home Loan Bank performing supervisory functions to the Office of Savings Associations; and

(2) such incidental transfers as the Chairman and the Agency may agree to.

Subtitle B—Conforming Amendments

SEC. 721. REPEAL OF LIMITATION OF OBLIGATION FOR ADMINISTRATIVE EXPENSES.

Section 7 of the First Deficiency Appropriation Act of 1936 (15 U.S.C. 712a) is amended by deleting from subsection (b) the following enumerated entities:

"1. Federal Home Loan Bank System;";

"2. Home Owners' Loan Corporation;"; and

"11. Federal Savings and Loan Insurance Corporation;".

SEC. 722. AMENDMENT OF ADDITIONAL POWERS OF CHAIRMAN.

(a) Subsection (c) of section 502 of the Housing Act of 1948, as amended (12 U.S.C. 1701c(b)), is amended by striking out the terms "Federal Home Loan Bank Board (which term as used in this section shall also include and refer to the Federal Savings and Loan Insurance Corporation, and the Chairman of the Federal Home Loan Bank Board)" and inserting in lieu thereof the following: "Chairman, Office of Savings Associations"; and

(b) Subsection (1) of subsection (c) of such section 502 is amended by inserting between the term "of any" and "State or" the following term: "Federal".

SEC. 723. AMENDMENT OF TITLE 5, UNITED STATES CODE.

(a) EXECUTIVE SCHEDULE.—(1) Section 5314 of title 5, United States Code (5 U.S.C. 5314) is amended by striking—

"Chairman of the Federal Home Loan Bank Board.";

and inserting:

"Chairman, Office of Savings Associations.
"President, Federal Home Loan Bank Agency.".

(2) Section 5315 of such title is amended by striking—

"Members, Federal Home Loan Bank Board.";

and inserting:

"Directors, Federal Home Loan Bank Agency.".

(b) Section 5373 of title 5, United States Code, is amended by inserting at subparagraph (2), between the terms, "481," and "and" the following terms: "1437, 1439,".

SEC. 724. AMENDMENT OF TITLE 31, UNITED STATES CODE.

(a)(1) Subchapter I of chapter 3 of subtitle I of title 31, United States Code, is amended by adding at the end thereof the following new section:

"§ 310. Office of Savings Associations

"The Office of Savings Associations, established under section 4 of the Home Owners' Loan Act of 1933 is subject to the general oversight of the Secretary of the Treasury.".

(2) The table of sections for chapter 3 of subtitle I of title 31, United States Code, is amended by inserting at the end of the items for subchapter I the following:

"310. Office of Savings Associations.".

(b) Subsection (c) of section 321 of title 31, United States Code, is amended by—

(1) striking "and" after the semicolon in paragraph (1);

(2) striking the period at the end of paragraph (2) and inserting "; and"; and

(3) adding at the end thereof the following:

"(3) of the Chairman, Office of Savings Associations.".

(c) Subsection (a) of section 714 of title 31, United States Code, is amended by—

(1) striking "and" before "the Office"; and

(2) inserting before the period the following: ", and the Office of the Chairman, Office of Savings Associations".

(d) Section 9101(3) of title 31, United States Code, is amended by striking subparagraph (E).

SEC. 725. AMENDMENT OF BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT PROVISIONS.

(a) Subsection (g)(1)(A) of section 255 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905) is amended by striking "Federal Home Loan Bank Board;" and "Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation;" and inserting "Federal Deposit Insurance Corporation, including the Bank Insurance Fund, the Saving Association Insurance Fund, and the FSLIC Resolution Fund, Chairman of the Office of Savings Associations, Resolution Trust Corporation, and Payments to the Resolution Funding Corporation;".

(b) Subsection (b)(4) of section 256 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 906) is amended by—

(1) striking subparagraph (C) and inserting the following:

"(C) Office of Savings Associations and Resolution Trust Corporation.";

(2) striking subparagraph (D); and

(3) redesignating subparagraphs (E), (F), and (G), as subparagraphs (D), (E), and (F), respectively.

(c) Subsection (g)(2) of section 255 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking "Federal Savings and Loan Insurance Corporation Fund (02-4037-0-3-372)".

TITLE VIII—BANK CONSERVATION ACT AMENDMENTS

SEC. 801. DEFINITIONS.

Section 202 of the Act of March 9, 1933 (48 Stat. 2, 12 U.S.C. 202) (the "Bank Conservation Act"), is amended by inserting the following: "or any other financial institution chartered or licensed under Federal law and subject to the supervision of the Comptroller of the Currency" after "national banking association".

SEC. 802. APPOINTMENT OF CONSERVATOR.

Section 203 of the Bank Conservation Act (12 U.S.C. 203) is amended to read as follows:

"SEC. 203. APPOINTMENT OF CONSERVATOR.

"(a) APPOINTMENT.—The Comptroller of the Currency may, without notice or prior hearing, appoint a conservator, which may be the Federal Deposit Insurance Corporation, to take possession and control of a bank whenever the Comptroller determines that one or more of the following circumstances exists—

"(1) the conditions for appointment of a receiver for the bank are present;

"(2)(A)(i) the bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business, and

"(ii) there is no reasonable prospect that the bank will be able to meet such demands or pay such obligations without Federal assistance; or

"(B)(i) the bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and

"(ii) there is no reasonable prospect for the replenishment of the capital of the bank without Federal assistance;

"(3) there is a violation or violations of laws, rules, or regulations, or any unsafe or unsound practice or condition which is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the condition of the bank or otherwise seriously prejudice the interests of its depositors;

"(4) the bank is in an unsafe or unsound condition to transact business;

"(5) the bank's board of directors consists of fewer than 5 members;

"(6) there is a willful or continuing violation of an order enforceable against the bank under section 8(i) of the Federal Deposit Insurance Act; or

"(7) there is concealment of books, papers, records, or assets of the bank, or refusal to submit books, papers, records, or affairs of the bank for inspection to any examiner or to any lawful agent of the Comptroller.

"(b) JUDICIAL REVIEW.—

"(1) Not later than 20 days after the initial appointment of a conservator pursuant to this section, the bank may bring an action in the United States district court for the judicial district in which the home office of such bank is located, or in the United States District Court for the District of Columbia, for an order requiring the Comptroller to terminate the appointment of the conservator, and the court, upon the merits, shall dismiss such action or shall direct the Comptroller to terminate the appointment of such conservator. The Comptroller's decision to appoint a conservator pursuant to this provision shall be set aside only if the court finds that such decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(2) The Comptroller may request a stay for a period of up to 90 days after the appointment of the conservator as to any legal action or proceeding to which the conservator or the bank is or may become a party. Upon petition, the court shall grant such stay as to all parties.

"(3) Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator, or restrain, or affect the exercise of powers or functions of a conservator. A court, upon application by the Comptroller, shall have jurisdiction to enforce an order of the Comptroller relating to—

"(A) the conservatorship and the bank in conservatorship, or

"(B) restraining or affecting the exercise of powers or functions of a conservator.

"(c) ADDITIONAL GROUNDS FOR APPOINTMENT.—In addition to the foregoing provisions, the Comptroller may appoint a conservator for a bank in the event—

"(1) the bank, by an affirmative vote of a majority of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment, or

"(2) the bank's status as an insured bank is terminated by the Federal Deposit Insurance Corporation.

The appointment of a conservator pursuant to this subsection shall not be subject to review.

"(d) EXCLUSIVE AUTHORITY.—

"(1) IN GENERAL.—The Comptroller shall have exclusive power and jurisdiction to appoint a conservator for a bank. Whenever the Comptroller appoints a conservator for any bank, he may appoint the Federal Deposit Insurance Corporation conservator for such bank. Except as provided in paragraph (2), the Federal Deposit Insurance Corporation, as such conservator, shall have all the powers granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers of banks under this Act and any other provision of law. The Comptroller may also appoint another person as conservator, who shall be subject to the provisions of this Act.

"(2) LIMITATIONS ON AUTHORITY.—Unless permitted under section 205(a)(2), a conservator appointed by the Comptroller under this Act shall not be appointed for the purpose of liquidating or winding up the affairs of the bank.

"(e) REPLACEMENT OF CONSERVATOR.—The Comptroller may, without notice or hearing, replace a conservator with another conservator. Such replacement shall not affect the bank's right under subsection (b) to obtain judicial review of the Comptroller's original decision to appoint a conservator.".

SEC. 803. EXAMINATIONS.

Section 204 of the Bank Conservation Act (12 U.S.C. 204) is amended to read as follows:

"SEC. 204. EXAMINATIONS.

"The Comptroller of the Currency, in consultation with the Board of Directors of the Federal Deposit Insurance Corporation (when the Corporation is appointed conservator), is authorized to examine and supervise the bank in conservatorship as long as the bank continues operations as an ongoing national bank. The Comptroller may use reports and other information provided by the Federal Deposit Insurance Corporation for this purpose.".

SEC. 804. TERMINATION OF CONSERVATORSHIP.

Section 205 of the Bank Conservation Act (12 U.S.C. 205) is amended to read as follows:

"SEC. 205. TERMINATION OF CONSERVATORSHIP.

"(a) GENERAL RULE.—At any time the Comptroller becomes satisfied that it may safely be done and that it would be in the public interest, the Comptroller, with the agreement of the Board of Directors of the Federal Deposit Insurance Corporation (when the Corporation is appointed conservator), may—

"(1) terminate the conservatorship and permit the involved bank to resume the transaction of its business subject to such terms, conditions, and limitations as the Comptroller may prescribe; or

"(2) terminate the conservatorship upon a sale, merger, consolidation, purchase and assumption, change in control, or voluntary liquidation of the involved bank.

"(b) OTHER GROUNDS FOR TERMINATION.—The Comptroller also may terminate the conservatorship upon a declaration that the bank is insolvent and upon the appointment of a receiver pursuant to section 1 of the Act of June 30, 1876 (12 U.S.C. 191).

"(c) ENFORCEMENT UNDER FEDERAL DEPOSIT INSURANCE ACT.—Such terms, conditions, and limitations as may be prescribed under subsection (a)(1) shall be enforceable under the provisions of section 8(i) of the Federal Deposit Insurance Act, to the same extent as an order issued pursuant to section 8(b) of the Federal Deposit Insurance Act, which has become final. The bank may bring an action in the United States district court for the judicial district in which the home office of such bank is located or in the United States District Court for the District of Columbia for an order requiring the Comptroller to terminate the order. An action for judicial review of the terms, conditions, and limitations may not be commenced later than 20 days from the date of the termination of the conservatorship or the imposition of the order, whichever is later.

"(d)(1) ACTION UPON TERMINATION.—Upon termination of the conservatorship under subsection (a)(2), the Federal Deposit Insurance Corporation, as conservator, or when another person is appointed conservator, such other person, shall proceed to conclude the affairs of the conservatorship in accordance with paragraph (2).

"(2)(A) Within 180 days of the sale, merger, consolidation, purchase and assumption, change in control, or voluntary liquidation, the conservator shall deposit all net proceeds received from the transaction, less any expenses of the conservatorship that are outstanding, with the United States district court for the judicial district in which the home office of such bank is located and shall cause notice to be published for three consecutive months and notify by mail all known and remaining creditors and shareholders. Within 60 days thereafter, any depositor, creditor, or other claimant of the bank, or any shareholder of the bank may bring an action in interpleader in that court for distribution of the proceeds. The district court shall disseminate such funds in an equitable manner. If no such action is instituted within one year after the date the funds are deposited with the district court, title to such net proceeds shall revert to the United States and the district court shall remit the funds to the Treasury of the United States.

"(B) The conservator shall be deemed to have discharged all responsibility of the conservatorship upon the deposit of the proceeds with the district court and fulfillment of the required notifications.".

SEC. 805. CONSERVATOR; POWERS AND DUTIES.

Section 206 of the Bank Conservation Act (12 U.S.C. 206) is amended to read as follows:

"SEC. 206. CONSERVATOR; POWERS AND DUTIES.

"(a) GENERAL POWERS.—A conservator shall have all the powers of the shareholders, directors, and officers of the bank and shall be authorized to operate the bank in its own name unless the Comptroller in the order of appointment limits the authority of the conservator.

"(b) SUBJECT TO RULES OF COMPTROLLER.—The conservator shall be subject to such rules, regulations, and orders as the Comptroller from time to time deems appropriate; and, except as otherwise specifically provided in such rules, regulations, or orders or in section 209 of this Act, shall be vested with or subject to the same rights, privileges, duties, restrictions, penalties, conditions, and limitations that apply to directors, officers, or employees of a national bank.

"(c) PAYMENT OF DEPOSITORS AND CREDITORS.—The Comptroller may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors such amounts as in the opinion of the Comptroller may safely be used for this purpose. All depositors and creditors who are similarly situated shall be treated in the same manner.

"(d) COMPENSATION OF CONSERVATOR AND EMPLOYEES.—The conservator and professional employees appointed to represent or assist the conservator shall not be paid amounts greater than are payable to employees of the Federal Government for similar services, except that the Comptroller of the Currency may authorize payment at higher rates (but not in excess of rates prevalent in the private sector), if the Comptroller determines that payment of such higher rates is necessary in order to recruit and retain competent personnel.

"(e) EXPENSES.—All expenses of any such conservatorship shall be paid by the bank and shall be a lien upon the bank which shall be prior to any other lien.".

SEC. 806. LIABILITY PROTECTION.

Section 209 of the Bank Conservation Act (12 U.S.C. 209) is amended to read as follows:

"SEC. 209. LIABILITY PROTECTION.

"(a) FEDERAL AGENCY AND EMPLOYEES.—In any case in which the conservator is a Federal agency or an employee of the Government, the provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to such conservator's liability for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

"(b) OTHER CONSERVATORS.—

"(1) IN GENERAL.—In any case where the conservator is not a conservator described in subsection (a), the conservator shall not be liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute bad faith or are grossly negligent, as determined by a court.

"(2) INDEMNIFICATION.—The Comptroller shall have authority to indemnify the conservator on such terms as the Comptroller deems proper.".

SEC. 807. RULES AND REGULATIONS.

Section 211 of the Bank Conservation Act (12 U.S.C. 211) is amended to read as follows:

"SEC. 211. RULES AND REGULATIONS.

"The Comptroller of the Currency is authorized and directed to prescribe such rules and regulations as the Comptroller may deem necessary to carry out the provisions of this Act. In any case where the Federal Deposit Insurance Corporation is the conservator, any rules or regulations prescribed by the Comptroller shall be consistent with the rules and regulations issued by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act.".

SEC. 808. REPEALS.

Sections 207 and 208 of the Bank Conservation Act (48 Stat. 3, 12 U.S.C. 207 and 208) are hereby repealed.

SEC. 809. CONFORMING AMENDMENT.

Section 5373(2) of title 5, United States Code, is amended by striking paragraph (2) and inserting the following:

"(2) sections 203, 248, 481 and 1819 of title 12;".

TITLE IX—ENFORCEMENT AUTHORITY IMPROVEMENTS

SEC. 901. SHORT TITLE.

This title may be cited as the "Enforcement Authority Improvements Act of 1989".

Subtitle A—Regulation of Financial Institutions

SEC. 911. CHANGE IN TERMINOLOGY.

(a) INSTITUTION-RELATED PARTY.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by striking—

(1) "director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank";

(2) "director, officer, employee, agent, or other person participating in the conduct of the affairs of such a bank";

(3) "director, officer or other person";

(4) "director, officer, or other person";

(5) "director or officer or other person";

(6) "director, officer, employee, agent or other person";

(7) "director, officer, employee, agent, or other person";

(8) "director or officer of an insured bank, or other person participating in the conduct of the affairs of such bank";

(9) "officer, director, employee, agent, or other person participating in the conduct of the affairs of such a bank";

(10) "director or officer thereof or other person participating in the conduct of its affairs"; and

(11) "director or officer or other person participating in the conduct of its affairs";

each place they appear and inserting "institution-related party".

(b) FINANCIAL INSTITUTION.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) (except subsections (b)(3), (b)(6), (m), (o), (r), and (s)) is amended—

(1) by striking "bank" each place it appears following "the", "such", "any", or "such a" and each place it appears immediately preceded by a comma and inserting "financial institution";

(2) by striking "the bank's" each place it appears and inserting "the financial institution's";

(3) by striking "the banks' " each place it appears and inserting "the financial institutions'";

(4) by striking "Federal savings bank" and inserting "Federal savings association";

(5) in subsection (g)(1), by striking "bank affairs" and inserting "affairs of any financial institution"; and

(6) in subsection (q), by striking "or banks".

(c) AMENDMENT TO SECTION 8(m).—Section 8(m) of the Federal Deposit Insurance Act (12 U.S.C. 1818(m)) is amended by striking "State bank" and "No bank" and inserting "State financial institution" and "No financial institution", respectively.

SEC. 912. PERIODS APPLICABLE TO INSURANCE TERMINATION.

Section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)) is amended—

(1) by striking "one hundred and twenty days" and inserting "60 days"; and

(2) by striking "shall continue for a period of two years" and inserting "shall continue for a period of not less than 6 months and not more than 2 years, as determined in the discretion of the Board of Directors".

SEC. 913. SUSPENSION OF INSURANCE.

Section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following:

"(2) SUSPENSION OF INSURANCE.—

"(A) IN GENERAL.—In addition to the administrative proceedings described in paragraph (1), but subject to subparagraph (B), whenever the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured financial institution has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Corporation may issue a temporary order suspending deposit insurance on all deposits received by the institution.

"(B) SPECIAL RULE FOR CERTAIN SAVINGS INSTITUTIONS.—(i) In determining the tangible capital of a savings association for purposes of this paragraph, the Board of Directors shall include goodwill to the extent it is considered a component of capital under section 5(t) of the Home Owners' Loan Act. Any savings association which would be subject to a suspension order under subparagraph (A) but for the operation of this subparagraph, shall be considered by the Corporation to be a 'special supervisory association'.

"(ii) The Corporation may issue a temporary order suspending deposit insurance on all deposits received by a special supervisory association whenever the Board of Directors determines (on or after the date of enactment of the FIRRE Act) that—

"(I) the capital of such association, as computed utilizing applicable accounting standards, has suffered a material decline;

"(II) that such association (or its directors or officers) is engaging in an unsafe or unsound practice in conducting the business of the association;

"(III) that such association is in an unsafe or unsound condition to continue operating as an insured association; or

"(IV) that such association (or its directors or officers) has violated any applicable law, rule, regulation, or order, or any condition imposed in writing by a Federal banking agency, or any written agreement including a capital improvement plan entered into with any Federal banking agency, or that the association has failed to enter into a capital improvement plan which is acceptable to the Corporation within 3 months after the date of enactment of the FIRRE Act.

Nothing in this paragraph limits the right of the Corporation or the Chairman of the Office of Savings Associations to enforce a contractual provision which authorizes the Corporation or the Chairman of the Office of Savings Associations, as a successor to the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board, to require a savings association to write down or amortize goodwill at a faster rate than otherwise required under this Act or under applicable accounting standards.

"(C) EFFECTIVENESS OF ORDER.—A temporary order suspending deposit insurance shall become effective not earlier than 10 days from the date of service upon the institution. Such temporary order shall remain effective and enforceable—

"(i) pending completion of the administrative proceedings, or

"(ii) until the Corporation shall dismiss such administrative proceedings,

unless set aside, limited, or suspended by a court in proceedings authorized under subparagraph (D).

"(D) APPEAL.—Within 10 days after a temporary order has been served upon the institution under this paragraph, the institution may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the home office of the institution is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order, and such court shall have jurisdiction to issue such injunction. The court shall issue an injunction preventing enforcement of the temporary order issued under this paragraph only upon a finding that issuance of such order by the Federal Deposit Insurance Corporation was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(E) CONTINUED INSURANCE FOR CERTAIN DEPOSITS.—The insured deposits of each depositor in such financial institution on the effective date of the order issued under this paragraph, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured, subject to the administrative proceedings otherwise provided in this section.

"(F) NOTICE.—The Corporation may publish notice of any order issued under this paragraph and the financial institution shall give notice of such order to each of its depositors in such manner and at such times as the Corporation finds necessary and orders for the protection of depositors. If the Corporation determines that the financial institution has not substantially complied with the required notice to depositors, the Corporation may provide such notice.

"(G) **Examinations of special supervisory associations.**—The Corporation shall make special examinations of all special supervisory associations within 3 months after the date of enactment of the FIRRE Act, and on a quarterly basis thereafter.

"(H) **Effect of failure to receive notice.**—The Corporation shall provide, by regulation that the deposits of any depositor who establishes that he or she did not receive, in the ordinary course of business, knowledge of the suspension of insurance under this paragraph shall remain insured until he or she received actual knowledge, and additions to deposits remain insured where a depositor establishes that an automatic deposit addition could not be stopped in a timely manner.".

SEC. 914. RESTITUTION, REIMBURSEMENT, AND OTHER REMEDIES.

Section 8(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1)) is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by adding at the end the following subparagraph:

"(B) The authority to issue an order under subparagraph (A) includes the authority to require an insured financial institution or institution-related party to—

"(i) make restitution or provide reimbursement or indemnification;

"(ii) provide a guarantee against loss;

"(iii) rescind agreements or contracts;

"(iv) dispose of any loan or asset involved; or

"(v) take such other action as the appropriate Federal banking agency determines to be appropriate.

Such order may place limitations on the activities or functions of the financial institution or any institution-related party necessary to correct the conditions resulting from any such violation or practice and may prohibit or restrict the growth of assets of the financial institution.".

SEC. 915. APPLICABILITY OF SECTION 8.

(a) **In General.**—Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended—

(1) in paragraph (3)—

(A) by striking "Nothing" in the second sentence and inserting "Except as provided in subsection (b)(6) of this section, nothing"; and

(B) by striking "(f) and (h) through (n)" and inserting "(y)"; and

(2) by adding at the end the following new paragraph:

"(6) **Applicability to savings and loan holding companies.**—This subsection and subsections (c) through (y) of this section shall apply to—

"(A) any savings and loan holding company;

"(B) any subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company; and

"(C) any subsidiary of a savings association;

in the same manner as they apply to a savings association.".

(b) TECHNICAL AMENDMENT.—Section 8(b)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(4)) is amended by striking "and (n)" and inserting ", (n), (s), (t), (u), (w), and (y)".

SEC. 916. TEMPORARY CEASE AND DESIST ORDER.

Section 8(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(c)(1)) is amended—

(1) by striking "substantial" and "seriously"; and

(2) by inserting the following sentence after the first sentence: "Such order may place limitations on the activities or functions of the financial institution or any institution-related party, including prohibitions or restrictions on the growth of assets of the institution".

SEC. 917. TEMPORARY CEASE AND DESIST ORDER RELATING TO BOOKS AND RECORDS.

(a) IN GENERAL.—Section 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(c)) is amended by adding at the end the following:

"(3) ORDERS RELATING TO BOOKS AND RECORDS.—

"(A) IN GENERAL.—Whenever the appropriate Federal banking agency determines that an insured financial institution's books and records are so incomplete or inaccurate that the appropriate Federal banking agency is unable, through the normal supervisory process, to determine the financial condition of that insured financial institution or the details or purpose of any transaction or transactions that may have an adverse effect on the financial condition of that insured financial institution, the agency may issue a temporary order requiring cessation of any activities the agency deems appropriate, including prohibitions or restrictions on the growth of assets of the institution, or affirmative action to restore such books and records to an accurate state, until completion of proceedings conducted under paragraph (1) of subsection (b) of this section.

"(B) EFFECTIVENESS OF ORDER.—Such order shall become effective upon service. Such order shall remain effective and enforceable—

"(i) pending completion of the administrative proceeding initiated under such notice; or

"(ii) until the agency determines by examination or otherwise that the financial institution's books and records are accurate and capable of reflecting the financial condition of the financial institution;

unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection.".

(b) STANDARD FOR REVIEW.—Section 8(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(c)(2)) is amended by adding at the end the following: "The court shall issue an injunction preventing enforcement of the temporary order issued under this subsection only upon a finding that issuance of such order by the appropriate Federal banking agency was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.".

SEC. 918. REMOVAL ORDERS.

(a) In General.—Section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) Removal orders.—Whenever the appropriate Federal banking agency determines that—

"(A) any institution-related party, directly or indirectly, has—

"(i) violated any law, rule, regulation, written agreement entered into with the appropriate Federal banking agency, or order which has become final,

"(ii) engaged or participated in any unsafe or unsound practice in connection with any insured financial institution or business institution, or

"(iii) committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty;

"(B) such insured financial institution or business institution has suffered or will probably suffer financial loss or other damage, the interests of its depositors have been or could be prejudiced by reason of such violation, practice, or breach, or the institution-related party has received financial gain by reason of such violation, practice, or breach; and

"(C) such violation, practice, or breach involves personal dishonesty on the part of such institution-related party or demonstrates willful or continuing disregard for the safety or soundness of such insured financial institution or business institution,

the agency may serve upon such institution-related party a written notice of its intention to remove such party from office or to prohibit his further participation in any manner in the conduct of the affairs of any insured financial institution.".

(b) Conforming Amendments.—Section 8(f) of the Federal Deposit Insurance Act (12 U.S.C. 1818(f)) is amended—

(1) by striking "(e)(4)" and inserting "(e)(3)";

(2) by striking "(e)(1), (e)(2), or (e)(3)" and inserting "(e)(1) or (e)(2)"; and

(3) by adding at the end the following: "The court shall issue an injunction preventing enforcement of the temporary order issued under subsection (e)(3) only upon a finding that issuance of such order by the appropriate Federal banking agency was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.".

SEC. 919. TEMPORARY SUSPENSION ORDERS.

Section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) is amended—

(1) by redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively; and

(2) by amending paragraph (3), as redesignated, to read as follows:

"(3) Temporary suspension orders.—

"(A) In general.—With respect to any institution-related party referred to in paragraph (1) or (2) of this subsection, the appropriate Federal banking agency may, if it deems it necessary for the protection of the financial institution or the interests of its depositors, by written order to such effect served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the financial institution.

"(B) EFFECTIVENESS OF ORDER.—Such suspension or prohibition shall become effective upon service of such order on the institution-related party. Such order shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1) or (2) of this subsection and until—

"(i) such time as the agency shall dismiss the charges specified in such notice, or

"(ii) if an order of removal or prohibition is issued against such party, the effective date of any such order,

unless stayed by a court in proceedings authorized by subsection (f) of this section. Copies of any order issued pursuant to this paragraph shall also be served upon any financial institution where the party involved is presently associated.".

SEC. 920. EFFECT OF SUSPENSION OR REMOVAL.

Section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) is amended by adding at the end the following:

"(6) EFFECT OF SUSPENSION OR REMOVAL ORDER.—Any person who is subject to a removal, suspension, or prohibition order pursuant to this subsection or subsection (g) shall also be removed, suspended, or prohibited from participation in the conduct of the affairs of—

"(A) any insured financial institution,

"(B) any bank holding company or subsidiary thereof,

"(C) any organization organized and operated under section 25(a) of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act,

"(D) any subsidiary of any insured financial institution,

"(E) any savings and loan holding company or subsidiary thereof;

"(F) any depository institution the accounts of which are insured by the National Credit Union Share Insurance Fund, and

"(G) any institution chartered under the Farm Credit Act of 1971,

unless the party involved has received the prior written approval of the appropriate Federal regulatory agency that issued such order. This paragraph shall only apply to a person who is an individual, unless the appropriate Federal regulatory agency specifically finds that it should apply to a corporation, firm, or other business entity.".

SEC. 921. CIVIL PENALTIES FOR CERTAIN VIOLATIONS.

(a) IN GENERAL.—Section 8(i)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)) is amended—

(1) by redesignating subparagraphs (i) through (vii) as subparagraphs (A) through (G), respectively; and

(2) by striking subparagraph (A), as redesignated, and inserting the following:

"(A) Any insured financial institution or any institution-related party which has—

"(i) violated any law or regulation relating to financial institutions, any condition imposed in writing by the appropriate Federal banking agency in connection with the granting of an application or other request by the financial institution or institution-related party, or the terms of any order which has become final under subsection (b), (c), (e), (g), or (s) of this section; or

"(ii) breached any fiduciary duty or engaged in any unsafe or unsound practice where such breach or practice has resulted in a loss to the financial institution or financial gain to the institution-related party;

shall pay a civil penalty of not more than $25,000 for each day during which such violation, breach, or practice continues. Notwithstanding the foregoing, for a violation, breach, or practice made with reckless disregard for the safety or soundness of the financial institution, the appropriate Federal banking agency may, in its discretion, assess a penalty of not more than $1,000,000 per day for each day during which such violation, breach, or practice continues.".

(b) STANDARD FOR IMPOSITION OF CERTAIN PENALTIES.—Section 8(i)(2)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)(B)) is amended by adding at the end the following: "Notwithstanding any other provision of law, an appropriate Federal banking agency may impose a civil penalty under a provision of Federal law on a financial institution or an institution-related party in an amount in excess of $2,500 per day only if such agency determines that—

"(i) the violation, breach, or practice has caused or is likely to cause a serious financial loss to the financial institution or to the holding company of which such institution is a subsidiary, to the Bank Insurance Fund, or to the Savings Association Insurance Fund;

"(ii) the violation, breach, or practice evidenced reckless disregard for the safety or soundness of the financial institution or resulted from gross negligence;

"(iii) the violation, breach, or practice was part of a pattern of violations, breaches, or practices by that financial institution or institution-related party; or

"(iv) the violation, breach, or practice resulted in the enrichment of the institution-related party charged with the violation, breach, or practice.".

SEC. 922. CRIMINAL PENALTIES FOR VIOLATION OF REMOVAL OR SUSPENSION ORDERS.

Section 8(j) of the Federal Deposit Insurance Act (12 U.S.C. 1818(j)) is amended to read as follows:

"(j) PENALTY FOR VIOLATION OF SUSPENSION OR REMOVAL ORDER.—Any institution-related party against whom there is outstanding and effective any notice or order served upon such person under paragraph (3) or (4) of subsection (e) or under subsection (g) who, directly or indirectly, without the prior written approval of the appropriate Federal regulatory agency that issued such notice or order—

"(1) participates in any manner in the conduct of the affairs of—

"(A) any insured financial institution,

"(B) any bank holding company or subsidiary thereof,

"(C) any organization organized and operated under section 25(a) of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act,

"(D) any subsidiary of any insured financial institution,

"(E) any savings and loan holding company or subsidiary thereof,

"(F) any depository institution whose accounts are insured by the National Credit Union Share Insurance Fund, or

"(G) any institution chartered under the Farm Credit Act of 1971;

"(2) solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorization in respect to any voting rights in an institution described in paragraph (1); or

"(3) votes for a director, or serves or acts as an institution-related party for an institution described in paragraph (1),

shall be fined not more than $1,000,000 for each day the violation continues or imprisoned for not more than 5 years, or both.".

SEC. 923. DEFINITIONS.

Section 8(k) of the Federal Deposit Insurance Act (12 U.S.C. 1818(k)) is amended to read as follows:

"(k) DEFINITIONS.—For the purpose of this section:

"(1) APPROPRIATE FEDERAL REGULATORY AGENCY.—The term 'appropriate Federal regulatory agency' means—

"(A) the appropriate Federal banking agency, as defined in subsection (q) of section 3;

"(B) the National Credit Union Administration Board in the case of a depository institution the accounts of which are insured by the National Credit Union Share Insurance Fund; and

"(C) the Farm Credit Administration in the case of an institution chartered under the Farm Credit Act of 1971.

"(2) ORDER WHICH HAS BECOME FINAL.—The term 'order which has become final' means an order issued by the appropriate Federal banking agency—

"(A) with the consent of the financial institution or the institution-related party concerned; or

"(B) which is not subject to further administrative review.

"(3) CONTROLLING SHAREHOLDER.—The term 'controlling shareholder' means a person that directly or indirectly, or acting through or in concert with one or more persons, owns or controls an insured financial institution. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual.

"(4) Additional terms.—Each appropriate Federal banking agency is authorized to promulgate regulations to define any term not otherwise defined in this section.".

SEC. 924. EMPLOYMENT PROTECTION.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end thereof the following:

"(t) Employment Protection.—

"(1) In general.—A federally insured financial institution or a financial institution holding company may not discharge or otherwise discriminate against any officer, director, or employee with respect to compensation, terms, conditions, or privileges of employment because the officer, director, or employee (or any person acting pursuant to the request of such individual) provided information to any financial institution regulatory authority or to the Department of Justice regarding a possible violation of any law or regulation by the financial institution or any institution-related party.

"(2) Civil action.—Any employee, officer, or director or former employee, officer, or director who believes he or she has been discharged or discriminated against in violation of paragraph (1) may file a civil action in Federal district court within 2 years from the date of such discharge or discrimination.

"(3) Remedies.—If the district court determines that a violation of paragraph (1) has occurred, it may order the financial institution which committed the violation to reinstate the employee, officer, or director to his former position, to pay compensatory damages, or to take other appropriate action to remedy any past discrimination.

"(4) Exception.—The protections of this subsection do not apply to any employee, officer, or director who deliberately causes the alleged violation of law or regulation.".

SEC. 925. COORDINATION WITH CHAIRMAN OF THE OFFICE OF SAVINGS ASSOCIATIONS.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end thereof the following:

"(u) Coordination with Chairman of the Office of Savings Associations.—The Corporation, based on an examination of a savings association by the Corporation or by the Chairman of the Office of Savings Associations, may recommend that the Chairman take any enforcement action authorized under this section with respect to any savings association. If the Chairman fails to take the recommended action or to provide an acceptable plan for addressing the concerns of the Corporation as set forth in its recommendation within 60 days of receipt of the formal recommendation from the Corporation, the Board of Directors may take such action if it determines that the association is in an unsafe or unsound condition to continue as an insured financial institution or that failure to take the recommended action will result in continuance of unsafe or unsound practices in conducting the business of the savings association. Notwithstanding the above, the Board of Directors may exercise its authority without regard to the time period set forth, in exigent circumstances upon notification of the Chairman. The Board of Directors shall, by agreement with the Chairman, set forth those exigent circumstances in which the Corporation may act without regard to the time period set forth above.".

SEC. 926. EFFECT ON OTHER AUTHORITY.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end thereof the following:

"(v) EFFECT ON OTHER AUTHORITY.—The authority granted to the appropriate Federal banking agencies under this section shall be in addition to, and not be restricted by, any other authority provided by Federal or State law.".

SEC. 927. NONDELEGABILITY.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end thereof the following:

"(w) NONDELEGABILITY.—Any decision by the Board of Directors to—

"(1) issue a notice of intention to terminate insured status under subsection (a);

"(2) issue a temporary order suspending deposit insurance;

"(3) issue a final order terminating deposit insurance under subsection (a); or

"(4) initiate an enforcement action against an ongoing savings association pursuant to subsection (v);

shall be made by the Board of Directors and may not be delegated.".

SEC. 928. EFFECT OF RESIGNATION OF INSTITUTION-RELATED PARTY.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end of the following:

"(x) EFFECT OF RESIGNATION OF INSTITUTION-RELATED PARTY.—The jurisdiction and authority of the appropriate Federal banking agency to proceed under this Act against any institution-related party shall not be affected by the resignation, termination of employment, or other separation of such person from an insured financial institution, including separation caused by the failure or deregistration of the institution. The preceding sentence shall also apply to all matters which are pending as of the effective date of the FIRRE Act, whether or not formally commenced, so long as the person was an institution-related party at the time the alleged transaction or conduct occurred.".

SEC. 929. PENALTY FOR PARTICIPATION.

Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) is amended to read as follows:

"SEC. 19. PENALTY FOR PARTICIPATION.

"(a) IN GENERAL.—Except with the prior written consent of the Corporation, a person who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or a breach of trust shall not—

"(1) act or serve as an institution-related party of an insured financial institution, or

"(2) participate in the conduct of the affairs of any insured financial institution.

"(b) PENALTY.—For each knowing violation of this section—

"(1) the financial institution or the individual involved each shall be fined not more than $1,000,000 for each day such prohibition is violated, or

"(2) the individual involved shall be imprisoned for not more than five years,

or both, and the financial institution and the individual shall be subject to a civil penalty of not more than $1,000,000 for each day such prohibition is violated. The Corporation may recover the costs of assessment and collection of such penalty for its use.".

SEC. 930. PARALLEL INCREASES IN CIVIL PENALTY PROVISIONS.

(a) FEDERAL RESERVE ACT.—Section 29(a) of the Federal Reserve Act (12 U.S.C. 504(a)) is amended by striking "$1,000 per day for each day during which such violation continues" and inserting "$25,000 for each day during which such violation continues. Notwithstanding the foregoing, for violations made with reckless disregard for the safety or soundness of the financial institution, the agency authorized to impose the penalty may, in its discretion, assess a penalty of not more than $1,000,000 per day for each day during which such violation continues. The jurisdiction and authority of the agency with authority to impose a civil penalty under this section against an officer, director, employee, or agent of a bank shall not be affected by the resignation, termination of employment, or other separation of such person from an insured bank, including separation caused by the failure of the institution. The preceding sentence shall also apply to all matters which are pending as of the effective date of the FIRRE Act, whether or not formally commenced, so long as the individual was an officer, director, employee, or agent of the bank at the time the alleged transactions or conduct occurred.".

(b) BANK HOLDING COMPANY ACT.—Section 8 of the Bank Holding Company Act of 1956 (12 U.S.C. 1847) is amended—

(1) by amending subsection (a) to read as follows:

"(a) Any company which willfully violates any provision of this Act, or any regulation or order issued by the Board pursuant thereto shall be subject to a fine of $1,000,000 for each day during which such violation continues. Any individual who willfully participates in a violation of any provision of this Act or any rule, regulation or order thereunder, shall be subject to a fine of not more than $1,000,000 for each day during which such violation continues or shall be imprisoned for not more than 5 years, or both."; and

(2) in subsection (b)(1)—

(A) by striking the first sentence and inserting the following: "Any company which or individual who willfully participates in a violation of any provision of this Act, or any regulation or order issued pursuant thereto, shall pay a civil penalty of not more than $1,000,000 per day for each day during which such violation continues and for all other violations shall pay a civil penalty of not more than $25,000 per day for each day during which such violation continues."; and

(B) by adding at the end the following sentence: "Criminal and civil penalties under this section are cumulative.".

(c) BANK HOLDING COMPANY AMENDMENTS.—Section 106(b)(2)(F)(i) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)(F)(i)) is amended by striking "$1,000 per day for each day during which such violation continues" and inserting "$25,000 for each day during which such violation continues. Notwithstanding the foregoing, for violations made with reckless disregard for the safety or soundness of the financial institution, the agency having authority to impose a penalty may, in its discretion, assess a penalty of not more than $1,000,000 per day for each day during which such violation continues. The jurisdiction and authority of the agency with authority to impose a civil penalty under this section against an officer, director, employee, or agent of a bank shall not be affected by the resignation, termination of employment, or other separation of such person from an insured bank, including separation caused by the failure of the institution. The preceding sentence shall also apply to all matters which are pending as of the effective date of the FIRRE Act, whether or not formally commenced, so long as the individual was an officer, director, employee, or agent of the bank at the time the alleged transactions or conduct occurred".

(d) NATIONAL BANK VIOLATIONS.—Section 5239 of the Revised Statutes (12 U.S.C. 93) is amended in subsection (b)(1) by striking "$1,000 per day for each day during which such violation continues" and inserting "$25,000 for each day during which such violation continues. Notwithstanding the foregoing, for violations made with reckless disregard for the safety or soundness of the financial institution, the Comptroller may, in his or her discretion, assess a penalty of not more than $1,000,000 per day for each day during which such violation continues. The jurisdiction and authority of the Comptroller to impose a civil penalty under this section against an officer, director, employee, agent, or other person participating in the conduct of the affairs of a bank shall not be affected by the resignation, termination of employment, or other separation of such person from an insured bank, including separation caused by the failure of the institution. The preceding sentence shall also apply to all matters which are pending as of the effective date of the FIRRE Act, whether or not formally commenced, so long as the individual was an officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank at the time the alleged transactions or conduct occurred".

(e) NATIONAL BANK EXAMINATIONS.—Section 5240 of the Revised Statutes (12 U.S.C. 481) is amended by striking "$100 for each day that any such refusal shall continue" and inserting "$25,000 for each day such refusal continues. Notwithstanding the foregoing, for violations made with reckless disregard for the safety or soundness of the bank, the Comptroller may, in his discretion, assess a penalty of not more than $1,000,000 for each day during which such refusal continues".

(f) NONMEMBER INSURED BANKS.—Section 18(j)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)(4)(A)) is amended by striking "$1,000 per day for each day during which such violation continues:" and inserting "$25,000 per day for each day during which such violation continues. Notwithstanding the foregoing, for violations made with reckless disregard for the safety or soundness of the bank, the Corporation may, in its discretion, assess a penalty of not more than $1,000,000 per day during which such violation continues. The jurisdiction and authority of the Corporation to impose a civil penalty under this section against an officer, director, employee, agent, or other person participating in the conduct of the affairs of a bank shall not be affected by the resignation, termination of employment, or other separation of such person from an insured bank, including separation caused by the failure of the institution. The preceding sentence shall also apply to all matters which are pending as of the effective date of the FIRRE Act, whether or not formally commenced, so long as the individual was an officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank at the time the alleged transactions or conduct occurred:".

SEC. 931. PENALTY FOR VIOLATION OF "CHANGE IN BANK CONTROL ACT".

Section 7(j)(16) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(16)) is amended to read as follows:

"(16) PENALTY.—

"(A) IN GENERAL.—Any person who violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency pursuant thereto, shall pay a civil penalty of not more than $25,000 for each day during which such violation continues. Notwithstanding the foregoing, for violations made with reckless disregard for the safety or soundness of the financial institution, the agency having authority to impose a civil money penalty, in its discretion, may assess a penalty of not more than $1,000,000 per day for each day during which such violation continues. The agency having authority to impose a civil money penalty may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under such authority. The penalty may be assessed and collected by the appropriate Federal banking agency by written notice.

"(B) ASSESSMENT AND COLLECTION.—A penalty imposed under this paragraph shall be assessed and collected in the manner provided in section 8(i)(2) of the Federal Deposit Insurance Act and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.".

SEC. 932. REPORTS.

(a) BANK PROTECTION ACT.—Section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882) is amended by striking in the first sentence of subsection (b) "and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures".

(b) NATIONAL BANKS.—

(1) REPORTS OF CONDITION.—Section 5211 of the Revised Statutes (12 U.S.C. 161) is amended—

(A) by striking, in the fifth sentence of subsection (a), "within ten days after the receipt of a request thereof from him;" and inserting "within the period of time specified by the Comptroller;"; and

(B) by striking the last sentence of subsection (c).

(2) AMOUNT OF PENALTY.—Section 5213 of the Revised Statutes (12 U.S.C. 164) is amended by striking the first sentence and inserting the following: "Every association which fails to make, obtain, transmit, or publish any report or information required by the Comptroller under section 5211 of the Revised Statutes or which submits any false, misleading, or incomplete report or information shall be subject to a penalty for such failure, submission, or publication of not more than $25,000 for each day during which such failure continues or for each day from the time of submission or publication until such false, misleading, or incomplete report or information is corrected. Notwithstanding the foregoing, for violations made with reckless disregard for the safety or soundness of the financial institution, the Comptroller may, in his discretion, assess a penalty of not more than $1,000,000 per day for each day during which such failure continues or for each day from the time of submission or publication until such false, misleading, or incomplete report or information is corrected. A penalty imposed under this section shall be assessed and collected in the manner provided in section 8(i)(2) of the Federal Deposit Insurance Act and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.".

(c) STATE NONMEMBER BANKS.—Section 7(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(1)) is amended by striking the last sentence and inserting the following: "Every such bank which fails to make or publish any such report within the period of time specified by the Corporation or which submits or publishes any false, misleading, or incomplete report or information shall be subject to a penalty for such failure, submission, or publication of not more than $25,000 for each day during which such failure continues or for each day from the time of submission or publication until such false, misleading, or incomplete report or information is corrected. Notwithstanding the foregoing, for such failure, submission or publication resulting from reckless disregard for the safety or soundness of the institution, such bank shall be subject to a penalty of not more than $1,000,000 for each day during which such failure continues or for each day from the time of submission or publication until such false, misleading, or incomplete information is corrected. Such penalty may be collected by the Corporation by suit or otherwise and the costs of assessment and collection for such penalty retained by the Corporation for its own use. A penalty imposed under this paragraph shall be assessed and collected in the manner provided in section 8(i)(2) of the Federal Deposit Insurance Act and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.".

(d) MEMBER BANKS.—The sixth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 324) is amended by striking the fourth sentence and inserting "Every bank which fails to make such reports within the period of time specified by the Board of Governors of the Federal Reserve System or which submits or publishes any false, misleading, or incomplete report or information shall be subject to a penalty for such failure, submission, or publication of not more than $25,000 for each day during which such failure continues or for each day from the time of submission or publication until such false, misleading, or incomplete report or information is corrected. Notwithstanding the foregoing, for such failure, submission or publication resulting from reckless disregard for the safety or soundness of the bank, such bank shall be subject to a penalty of not more than $1,000,000 for each day during which such failure continues or for such day from the time of submission or publication until such false, misleading or incomplete information is corrected. A penalty imposed under this paragraph shall be assessed and collected in the same manner as prescribed by section 8(i)(2) of the Federal Deposit Insurance Act and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.".

(e) BANK HOLDING COMPANIES.—Section 8(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1847(b)) is amended—

(1) by redesignating subsection (b)(1) as subsection (b) and redesignating sections (b)(2) through (6) as sections (d)(1) through (5); and

(2) by inserting after subsection (b) the following:

"(c) REPORTING VIOLATIONS.—Any company which fails to make such reports as are required by this chapter or any regulation or order issued pursuant thereto within the period of time specified by the Board or which submits or publishes any false, misleading or incomplete report or information shall pay a civil penalty of not more than $25,000 for each day during which such failure continues or for each day from the time of submission or publication until such false, misleading, or incomplete report or information is corrected. Notwithstanding the foregoing, for such failure, submission or publication made with reckless disregard, the company shall be subject to a penalty of not more than $1,000,000 for each day during which such failure continues or for each day from the time of submission or publication until such false or misleading report or submission is corrected.".

Subtitle B—Regulation by the Chairman of the Office of Savings Associations

SEC. 941. REPORTS OF CONDITION AND PENALTIES.

Section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), as amended by section 301, is amended by adding at the end the following:

"(w) REPORTS OF CONDITIONS.—

"(1) IN GENERAL.—Each savings association shall make reports of condition to the Chairman which shall be in such form and shall contain such information as the Chairman may require.

"(2) PUBLICATION.—The Chairman may require reports of condition to be published in such manner as the Chairman may direct.

"(3) PENALTY.—Any savings association which fails to submit or publish any report or information required by the Chairman under paragraph (1) or (2) within the period of time specified by the Chairman, or submits or publishes any false, misleading, or incomplete report or information shall be subject to a penalty for such failure, submission, or publication of not more than $25,000 for each day during which such failure continues, or for each day from the time of submission or publication until such false, misleading, or incomplete report or information is corrected. Notwithstanding the foregoing, for violations resulting from reckless disregard for the safety or soundness of a savings association, the Chairman may, in his or her discretion, assess a penalty of not more than $1,000,000 for each day during which such failure continues or for each day from the time of submission or publication until such false or misleading report or information is corrected.

"(4) PROCEDURE.—Any penalty imposed under paragraph (3) shall be assessed and collected by the Chairman in the manner provided in section 8(i)(2) of the Federal Deposit Insurance Act.

"(5) ACCESS TO REPORTS.—The Federal Deposit Insurance Corporation shall have access to reports of condition made pursuant to paragraph (1) and any revision made to any such report.".

SEC. 942. CONTINUITY OF AUTHORITY FOR ONGOING LITIGATION.

All litigation in which the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation is a party shall be continued after the effective date of this Act by the Chairman of the Office of Savings Associations, the Federal Deposit Insurance Corporation, or the Federal Home Loan Bank Agency, as appropriate under this Act.

SEC. 943. EXTENSION OF AUTHORITY.

(a) IN GENERAL.—Any administrative hearing or proceeding initiated prior to the effective date of this Act or any order issued, agreement entered, condition imposed, memorandum of understanding entered, penalty assessed or capital directive issued—

(1) pursuant to those provisions in section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)) that are repealed by title III of this Act, or

(2) pursuant to section 407 (e) through (h), (k), (m), or (p) of the National Housing Act (12 U.S.C. 1730),

shall be continued by the Chairman of the Office of Savings Associations as if those provisions remained in effect.

(b) CONTINUING EFFECT OF ORDERS.—(1) Any person subject to an order, agreement, or condition issued by the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board prior to the effective date of this Act shall remain subject to the provisions of such order with respect to an institution that is a member of the Savings Association Insurance Fund unless otherwise authorized by the Chairman of the Office of Savings Associations.

(2) Any individual who has been prohibited by order of the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board from voting for any director or serving, acting as

a director, officer, or employee, or participating in the affairs of any institution the accounts of which were insured by the Federal Savings and Loan Insurance Corporation prior to the effective date of this Act or of any holding company, subsidiary, or service corporation of such institution may not serve or act in any of those capacities with respect to a financial institution that is a member of the Savings Association Insurance Fund, without the prior written approval of the Chairman of the Office of Savings Associations.

Subtitle C—Credit Unions

SEC. 951. DEFINITION OF INSTITUTION-RELATED PARTY.

Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by striking the following phrases:

(1) "director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such a credit union";

(2) "director, officer, committee member, employee, agent, or other person";

(3) "director, officer, committee member, or employee";

(4) "director, officer, or committee member";

(5) "director, committee member, or officer";

(6) "director, committee member, officer, or other person";

(7) "officer, director, committee member, employee, agent, or other person participating in the conduct of the affairs of such a credit union";

(8) "officer, director, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union";

(9) "director, committee member, or officer or other person";

(10) "director, committee member, officer or other person";

(11) "director, officer, committee member or other person";

(12) "director, officer, committee member, or other person"; and

(13) "director, committee member, or officer of an insured credit union, or other person participating in the conduct of the affairs of such credit union";

each place they appear and inserting "institution-related party".

SEC. 952. PERIODS APPLICABLE TO INSURANCE TERMINATION.

Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended—

(1) in subsection (b)(1), by striking "one hundred and twenty days" and inserting "60 days"; and

(2) in subsection (c), by striking "one year" and inserting "not less than 6 months and not more than 2 years as determined in the discretion of the Board".

SEC. 953. RESTITUTION AND REIMBURSEMENT AUTHORIZED.

Section 206(e) of the Federal Credit Union Act (12 U.S.C. 1786(e)) is amended by adding at the end the following new paragraph:

"(3) Restitution and Reimbursement.—The authority to issue an order under this subsection which requires an insured credit union or any institution-related party to take affirmative action to correct any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such insured credit union or institution-related party to—

"(A) make restitution or provide reimbursement or indemnification;

"(B) provide a guarantee against loss;

"(C) rescind agreements or contracts;

"(D) dispose of any loan or asset involved; or

"(E) take such other action as the Board determines to be appropriate.

Such order may place limitations on the activities or functions of the credit union or any institution-related party necessary to correct the conditions resulting from any such violation or practice and may prohibit or restrict the growth of assets of the credit union.".

SEC. 954. LIMITATIONS ON ACTIVITIES.

Section 206(e) of the Federal Credit Union Act (12 U.S.C. 1786(e)) is amended by adding at the end the following:

"(4) The authority to issue an order under this subsection or subsection (f) includes the authority to place limitations on the activities or functions of an insured credit union, or institution-related party, including restriction on the growth of assets of the credit union.".

SEC. 955. TEMPORARY CEASE AND DESIST ORDERS RELATING TO BOOKS AND RECORDS.

Section 206(f) of the Federal Credit Union Act (12 U.S.C. 1786(f)) is amended—

(1) in paragraph (1), by striking "substantial" and "seriously";

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(3) by inserting after paragraph (1) the following new paragraph:

"(2) ORDERS RELATING TO BOOKS AND RECORDS.—

"(A) IN GENERAL.—Whenever the Board determines that any insured credit union's books and records are so incomplete or inaccurate that the Board is unable through the normal supervisory process to determine the financial condition of that credit union or the details or purpose of any transactions that may have an adverse effect on the financial condition of that credit union, the Board may issue a temporary order requiring cessation of any activities the Board deems appropriate, including prohibitions or restrictions on the growth of assets of the credit union, or affirmative action to restore such books and records to a complete and accurate state, until completion of proceedings conducted under paragraph (1) of subsection (e) of this section.

"(B) EFFECTIVENESS OF ORDER.—Such order shall become effective upon service, and shall remain effective and enforceable—

"(i) pending completion of the administrative proceeding initiated under such notice, or "(ii) until the Board determines by examination or otherwise that the credit union's books and records are accurate and capable of reflecting the financial condition of the credit union,

unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (3) of this subsection."; and

(4) by adding at the end of paragraph (3), as redesignated, the following: "The court shall issue an injunction preventing enforcement of the temporary order issued under this subsection only upon a finding that issuance of such order by the appropriate Federal banking agency was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.".

SEC. 956. REMOVAL ORDERS.

Section 206(g) of the Federal Credit Union Act (12 U.S.C. 1786(g)) is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) REMOVAL ORDERS.—Whenever the Board determines that—

"(A) any institution-related party, directly or indirectly, has—

"(i) violated any law, rule, regulation, written agreement entered into with the Board, or order which has become final,

"(ii) engaged or participated in any unsafe or unsound practice in connection with any insured credit union or other business institution,

"(iii) committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty, or

"(iv) by conduct or practice evidenced his personal dishonesty or unfitness to continue as an institution-related party; and

"(B) such insured credit union or other business institution has suffered or will probably suffer substantial financial loss or other damage, or the interests of its insured members have been or could be seriously prejudiced by reason of such violation, practice, or breach, or the institution-related party has received financial gain by reason of such violation, practice, or breach,

the Board may serve upon such institution-related party a written notice of its intention to remove such party from office or to prohibit his further participation in any manner in the conduct of the affairs of any insured credit union.".

SEC. 957. TEMPORARY SUSPENSION ORDERS.

(a) IN GENERAL.—Section 206(g) of the Federal Credit Union Act (12 U.S.C. 1786(g)) is amended—

(1) by striking paragraph (7),

(2) by redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively, and

(3) by amending paragraph (3) (as so redesignated) to read as follows:

"(3) TEMPORARY SUSPENSION ORDERS.—

"(A) IN GENERAL.—With respect to any institution-related party referred to in paragraph (1) or (2) of this subsection, the Board may, if it deems necessary for the protection of the credit union or the interests of its members, by written order to such effect served upon such party, suspend that party from office or prohibit that party from further participation in any manner in the conduct of the affairs of the credit union.

"(B) EFFECTIVENESS OF ORDER.—Such suspension or prohibition shall become effective upon service of such order on the institution-related party. Such order shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraphs (1) and (2) of this subsection and until—

"(i) such time as the Board shall dismiss the charges specified in such notice, or

"(ii) if an order of removal or prohibition is issued against such party, the effective date of any such order,

unless stayed by a court in proceedings authorized by paragraph (5) of this subsection. Copies of any order issued pursuant to this paragraph shall also be served upon any institution where the party involved is presently associated.".

(b) TECHNICAL AMENDMENT.—Section 206(g)(5) of the Federal Credit Union Act (12 U.S.C. 1786(g)(5)), as redesignated, is amended—

(1) by striking "(4)" and inserting "(3)";

(2) by striking "(1), (2), or (3)" and inserting "(1) or (2)"; and

(3) by adding at the end the following: "The court shall issue an injunction preventing enforcement of the temporary order issued under this subsection only upon a finding that issuance of such order by the appropriate Federal banking agency was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.".

SEC. 958. EFFECT OF REMOVAL OR SUSPENSION.

Section 206(g) of the Federal Credit Union Act (12 U.S.C. 1786(g)), as redesignated, is amended by adding at the end the following:

"(6) EFFECT OF SUSPENSION OR REMOVAL ORDER.—Any person who is subject to a removal, suspension, or prohibition order pursuant to this subsection or subsection (i) shall also be removed, suspended, or prohibited from participation in the conduct of the affairs of—

"(A) any insured institution,

"(B) any bank holding company or subsidiary of a bank holding company (as those terms are defined in the Bank Holding Company Act of 1956),

"(C) any organization organized and operated under section 25(a) of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act,

"(D) any subsidiary of any insured financial institution,

"(E) any savings and loan holding company or any subsidiary of a savings and loan holding company (as those terms are defined in the Home Owners' Loan Act of 1933), and

"(F) any institution chartered under the Farm Credit Act of 1971,

unless the party involved has received the prior written approval of the appropriate Federal regulatory agency that issued the order.

This paragraph shall only apply to a person who is an individual, unless the appropriate Federal regulatory agency specifically finds that it should apply to a corporation, firm, or other business entity.".

SEC. 959. EFFECT OF RESIGNATION OF INSTITUTION-RELATED PARTY.

Section 206(g) of the Federal Credit Union Act (12 U.S.C. 1786(g)) is amended by adding at the end the following:

"(7) The jurisdiction and authority of the Board to proceed under this Act against any institution-related party shall not be affected by the resignation, termination of employment, or other separation of such person from an insured credit union, including separation caused by the failure of the credit union. The preceding sentence shall also apply to all matters which are pending as of the effective date of the FIRRE Act, whether or not formally commenced, so long as the person was an institution-related party at the time the alleged transaction or conduct occurred.".

SEC. 960. CIVIL PENALTY FOR VIOLATION OF CONDITION IMPOSED IN WRITING.

The first sentence of section 206(k)(2)(A) of the Federal Credit Union Act (12 U.S.C. 1786(k)(2)(A)) is amended to read as follows: "Any insured credit union and any institution-related party which has—

"(i) violated any law or regulation relating to financial institutions, or any condition imposed in writing by the Board in connection with the granting of an application or other request by the credit union or institution-related party, or the terms of any order which has become final under subsection (e), (f), (g), (i), or (p) of this section; or

"(ii) breached any fiduciary duty or engaged in any unsafe or unsound practice where such breach or practice has resulted in a loss to the credit union or pecuniary gain to the institution-related party;

shall pay a civil penalty of not more than $25,000 for each day during which such violation continues. Notwithstanding the foregoing, for a violation made with reckless disregard for the safety or soundness of the financial institution, the Board may, in its discretion, assess a penalty of not more than $1,000,000 per day for each day during which such violation continues.".

SEC. 961. CRIMINAL PENALTY FOR VIOLATION OF REMOVAL OR SUSPENSION ORDER.

Section 206(l) of the Federal Credit Union Act (12 U.S.C. 1786(l)) is amended to read as follows:

"(l) Penalty.—Any person against whom there is outstanding and effective any order served upon such person under paragraph (3) or (4) of subsection (g) or under subsection (i) who, directly or indirectly, without the prior written approval of the Board—

"(1) participates in any manner in the conduct of the affairs of—

"(A) any insured institution,

"(B) any bank holding company or subsidiary of a bank holding company (as those terms are defined in the Bank Holding Company Act of 1956), "(C) any organization organized and operated under section 25(a) of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act,

"(D) any savings and loan holding company or subsidiary thereof (as those terms are defined in the Home Owners' Loan Act of 1933), or

"(E) any institution chartered under the Farm Credit Act of 1971;

"(2) solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorization in respect to any voting rights in an institution described in paragraph (1); or

"(3) votes for a director, or serves or acts as an institution-related party of an institution described in paragraph (1);

shall be fined not more than $1,000,000 or imprisoned for not more than 5 years, or both.".

SEC. 962. TECHNICAL AMENDMENT.

Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by striking subsection (m) and redesignating subsections (n), (o), (p) and (q) of this section as subsections (m), (n), (o) and (p), respectively.

SEC. 963. DEFINITIONS.

Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end thereof the following:

"(q) DEFINITIONS.—As used in this section:

"(1) APPROPRIATE FEDERAL REGULATORY AGENCY.—The term 'appropriate Federal regulatory agency' has the same meaning as in section 8 of the Federal Deposit Insurance Act.

"(2) ORDER WHICH HAS BECOME FINAL.—The term 'order which has become final' means an order issued by the Board—

"(A) with the consent of the credit union or the institution-related party concerned;

"(B) which is not subject to further administration review.

"(3) INSTITUTION-RELATED PARTY.—

"(A) The term 'institution-related party' means a director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of an insured credit union.

"(B) For the purpose of this paragraph, the term 'other person participating in the conduct of the affairs of an insured credit union' includes, in addition, an independent contractor (including an attorney, appraiser, or accountant) who knowingly or recklessly participates in a wrongful action that caused or is likely to cause significant loss.

"(4) INSURED INSTITUTION.—The term 'insured institution' means an insured credit union, as defined in section 101, or a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation.

"(5) VIOLATION.—The term 'violation' includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.".

SEC. 964. EFFECT OF OTHER LAW.

Section 206 of the Federal Credit Act (12 U.S.C. 1786) is amended by adding at the end thereof the following:

"(r) Effect of Other Law.—The authority granted to the Board under this section shall be in addition to, and not restricted by, any other authority provided by Federal or State law.".

SEC. 965. EMPLOYMENT PROTECTION.

Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end thereof the following:

"(s) Employment Protection.—

"(1) In general.—A credit union may not discharge or otherwise discriminate against any officer, director, or employee with respect to compensation, terms, conditions, or privileges of employment or membership because such individual (or any person acting pursuant to the request of such individual) provided information to any financial institution regulatory authority or to the Department of Justice regarding a possible violation of any law or regulation by the credit union or its institution-related party.

"(2) Civil action.—Any employee or former employee who believes he or she has been discharged or discriminated against in violation of paragraph (1) may file a civil action in Federal district court within 2 years from the date of such discharge or discrimination.

"(3) Remedies.—If the district court determines that a violation of paragraph (1) has occurred, it may order the financial institution which committed the violation to reinstate the employee to his former position, to pay compensatory damages, or to take other appropriate action to remedy any past discrimination.

"(4) Exception.—The protections of this subsection do not apply to any employee who deliberately causes the alleged violation of law or regulation.".

SEC. 966. STANDARD FOR IMPOSITION OF CIVIL PENALTIES.

Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end thereof the following:

"(t) Standard for Imposition of Civil Penalties.—Notwithstanding any other provision of law, the Board may impose a civil penalty under a provision of Federal law on a credit union or an institution-related party in an amount in excess of $2,500 per day only if the Board determines that—

"(1) the violation, breach, or practice has caused or is likely to cause a serious financial loss to the credit union or to the National Credit Union Share Insurance Fund;

"(2) the violation, breach, or practice evidenced reckless disregard for the safety or soundness of the credit union or resulted from gross negligence;

"(3) the violation, breach, or practice was part of a pattern of violations, breaches, or practices by that credit union or institution-related party; or

"(4) the violation, breach, or practice resulted in the enrichment of the institution-related party charged with the violation.".

SEC. 967. PROHIBITION AGAINST PARTICIPATION.

Section 205 of the Federal Credit Union Act (12 U.S.C. 1785) is amended—

(1) in the first sentence of subsection (d), by inserting after "insured credit union" the following: "or shall participate in the conduct of the affairs of such insured credit union"; and

(2) by striking the second sentence of subsection (d) and inserting "For each knowing violation of this subsection, the credit union or the individual involved shall pay a civil penalty of not more than $25,000 for each day such violation continues. Notwithstanding the foregoing, for violations made with reckless disregard for the safety or soundness of the institution, the Board, in its discretion may assess a penalty of not more than $1,000,000 per day for each day such violation continues. The Board may recover the costs of penalty assessment and collection for its use.".

SEC. 968. REPEAL OF REPORTING REQUIREMENT.

Section 205(e)(2) of the Federal Credit Union Act (12 U.S.C. 1787(e)(2)) is amended in the first sentence by striking "and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures".

SEC. 969. REPORTING VIOLATIONS.

Section 202(a)(3) of the Federal Credit Union Act (12 U.S.C. 1782(a)(3)) is amended by striking the second sentence and inserting the following: "Any insured credit union which—

"(A) fails to submit or publish any report required under this subsection or section 106 within the period of time specified by the Board; or

"(B) submits or publishes any false, misleading, or incomplete report or information;

shall be subject to a penalty for such failure, submission, or publication or false, misleading, or incomplete submission of not more than $25,000 for each day during which such failure continues or for each day from the time of submission or publication until such false, misleading, or incomplete report or information is corrected. Notwithstanding the foregoing, for violations made with reckless disregard for the safety or soundness of a credit union, the Board, in its discretion, may assess a penalty of not more than $1,000,000 for each day during which such failure continues or for each day from the time of submission or publication until such false, misleading, or incomplete report or information is corrected. Any penalty imposed by the preceding sentence shall be assessed and collected by the Board in the manner provided in section 206(k)(2) (for penalties imposed under such section), and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.".

SEC. 970. AUDIT REQUIREMENT.

Section 202(a) of the Federal Credit Union Act (12 U.S.C. 1782(a)) is amended by adding at the end thereof the following new paragraph:

"(6) AUDIT REQUIREMENT.—

"(A) In general.—Before the end of the 120-day period beginning on the date of the enactment of the FIRRE Act, and notwithstanding any provision of Federal law, the law of any State, or the constitution of any State, the Board shall prescribe, by regulation, audit standards which require an outside, independent audit of any insured credit union by a certified public accountant for any fiscal year (of such credit union)—

"(i) for which such credit union has not conducted an annual supervisory committee audit;

"(ii) for which such credit union has not received a complete and satisfactory supervisory committee audit; or

"(iii) during which such credit union has experienced persistent and serious recordkeeping deficiencies, as determined by the Board.

"(B) Unsafe or unsound practice.—The Board may treat the failure of any insured credit union to obtain an outside, independent audit for any fiscal year for which such audit is required under subparagraph (A) as an unsafe or unsound practice within the meaning of section 206(b).".

Subtitle D—Right to Financial Privacy Act

SEC. 981. AMENDMENTS TO RIGHT TO FINANCIAL PRIVACY ACT.

(a) Definitions.—Section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) in paragraph (7), as redesignated, by striking all matter before subparagraph (A) and inserting in lieu thereof:

"(7) 'supervisory agency' means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations or records or transactions of that institution, holding company, or subsidiary—"; and

(3) by inserting after paragraph (5) the following new paragraph:

"(6) 'holding company' means—

"(A) a 'bank holding company' as defined in section 2 of the Bank Holding Company Act of 1956,

"(B) a company described in section 3(f)(1) of the Bank Holding Company Act of 1956, or

"(C) a 'savings and loan holding company' as defined in the Home Owners' Loan Act of 1933.".

(b) Exceptions to Disclosure Requirements.—Section 1113 of the Right of Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) Nothing in this chapter applies to the examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions, including conservatorship or receivership functions, with respect to any financial institution, holding company, or any subsidiary of a financial institution or holding company, or any officer, director, employee, agent or other person participating in the affairs thereof."; and

(2) by adding at the end the following new paragraphs:

"(m) Nothing in this title shall apply to the examination by or disclosure to employees or agents of the Board of Governors of the Federal Reserve System or any Federal Reserve Bank of financial records or information, if such examination or disclosure is made in connection with the exercise of the Federal Reserve System's authority to extend credit to depository institutions or others.

"(n) Nothing in this title shall apply to the examination by or disclosure to the Resolution Trust Corporation or its employees or agents of financial records or information, if such examination or disclosure is made in connection with the exercise of its conservatorship, receivership, or liquidation functions with respect to a financial institution.".

(c) GRAND JURY INFORMATION.—Section 1120 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3420) is amended—

(1) by inserting "(a)" before "Financial"; and

(2) by adding at the end thereof the following paragraph:

"(b) A financial institution on which a grand jury subpoena has been served, relating to a possible violation of section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344 of title 18, United States Code, shall not notify the customer whose records are sought or any other party about the existence or contents of the subpoena or information that has been furnished to the grand jury in response to that subpoena. Any person who violates the requirement of the preceding sentence shall be punished as provided in section 1510(b) of title 18, United States Code.".

TITLE X—CRIMINAL ENHANCEMENTS

SEC. 1001. INCREASED CRIMINAL PENALTIES AND CIVIL PENALTIES FOR CERTAIN FINANCIAL INSTITUTION OFFENSES.

(a) RECEIPT OF COMMISSIONS OR GIFTS FOR PROCURING LOANS.—Section 215 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "$5,000" and inserting "$1,000,000";

(B) by striking "five" and inserting "15"; and

(C) by striking the period at the end thereof and inserting: "and shall be subject to a civil penalty of up to $1,000,000 or the amount of the thing given, offered, promised, solicited, demanded, accepted or agreed to be accepted, whichever is greater. Civil and criminal penalties under this section are cumulative."; and

(2) in subsection (b)—

(A) by striking "a bank" in paragraph (1) and inserting "an institution";

(B) by striking paragraphs (2) and (8);

(C) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (2), (3), (4), (5), and (6);

(D) by inserting "or" at the end of paragraph (6); and

(E) by striking "; or" at the end of paragraph (7) and inserting a period; and

(3) by adding at the end the following:

"(e) The Attorney General may bring a civil action against any person who violates the provisions of this section. The action may be brought in any district court of the United States or the United States courts of any territory in which the defendant or, in the case of multiple defendants, any one defendant resides, is doing business, may be found, or in which any proscribed act was committed. A subpoena requiring the attendance of a witness at trial or hearing conducted under this section may be served at any place in the United States. The court in which such action is brought shall determine the existence of a violation upon a preponderance of the evidence, shall assess the civil penalty, and shall have power to grant such other relief, including injunctions, as may be appropriate. Such remedies shall be in addition to any other remedy available under statutory or common law.

"(f)(1) For the purpose of any civil investigation or proceeding under this section, the Attorney General or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

"(2) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Attorney General or officer designated by the Attorney General to produce records, if so ordered, or to give testimony touching upon the matter under civil investigation or in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district where such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Attorney General shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.".

(b) THEFT, EMBEZZLEMENT, AND MISAPPLICATION BY BANK OFFICER OR EMPLOYEE.—Section 656 of title 18, United States Code, is amended—

(1) by striking "$5,000" and inserting "$1,000,000" and striking "five" and inserting "15";

(2) by striking the period at the end of the first paragraph and inserting the following: "and shall be subject to a civil pen-

alty of up to $1,000,000 for each day the violation continues or the amount embezzled, abstracted, purloined or willfully misapplied and any pecuniary gain attributable to the proscribed conduct, or up to $5,000,000, whichever is greater. Civil and criminal penalties under this section are cumulative."; and

(3) by inserting "(a)" before "Whoever" and adding new subsections (b) and (c) as follows:

"(b) The Attorney General may bring a civil action against any person who violates the provisions of the preceding section. The action may be brought in any district court of the United States or the United States courts of any territory in which the defendant or, in the case of multiple defendants, any one defendant resides, is doing business, may be found, or in which any proscribed act was committed. A subpoena requiring the attendance of a witness at trial or hearing conducted under this provision may be served at any place in the United States. The court in which such action is brought shall determine the existence of a violation upon a preponderance of the evidence, shall assess the civil penalty, and shall have power to grant such other relief, including injunctions, as may be appropriate. Such remedies shall be in addition to any other remedy available under statutory or common law.

"(c)(1) For the purpose of any civil investigation or proceeding under this section, the Attorney General or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

"(2) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Attorney General or officer designated by the Attorney General to produce records, if so ordered, or to give testimony touching upon the matter under civil investigation or in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district where such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Attorney General shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.".

(c) THEFT, EMBEZZLEMENT, OR MISAPPLICATION BY LENDING, CREDIT, OR INSURANCE INSTITUTION OFFICER OR EMPLOYEE.—Section 657 of title 18, United States Code, is amended—

(1) by striking "$5,000" and inserting "$1,000,000" and striking "five" and inserting "15";

(2) by striking the period at the end of the section and inserting the following: "and shall be subject to a civil penalty of $1,000,000 for each day the violation continues or the amount embezzled, abstracted, purloined or willfully misapplied and any pecuniary gain attributable to that proscribed conduct, or $5,000,000, whichever is greater. Civil and criminal penalties under this section are cumulative."; and

(3) by inserting "(a)" before "Whoever" and by adding new subsections (b) and (c) as follows:

"(b) The Attorney General may bring a civil action against any person who violates the provisions of the preceding section. The action may be brought in any district court of the United States or the United States courts of any territory in which the defendant or, in the case of multiple defendants, any one defendant resides, is doing business, may be found, or in which any proscribed act was committed. A subpoena requiring the attendance of a witness at trial or hearing conducted under this provision may be served at any place in the United States. The court in which such action is brought shall determine the existence of a violation upon a preponderance of the evidence, shall assess the civil penalty, and shall have power to grant such other relief, including injunctions, as may be appropriate. Such remedies shall be in addition to any other remedy available under statutory or common law.

"(c)(1) For the purpose of any civil investigation or proceeding under this section, the Attorney General or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

"(2) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Attorney General or officer designated by the Attorney General to produce records, if so ordered, or to give testimony touching upon the matter under civil investigation or in question. And any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Attorney General shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.".

(d) BANK ENTRIES, REPORTS, AND TRANSACTIONS.—Section 1005 of title 18, United States Code, is amended—

(1) by inserting "bank holding company, savings and loan holding company," after "member bank," in the first clause thereof;

(2) by inserting "or company" after "such bank" each place it appears in the third clause;

(3) by striking "—" at the end of the third clause following the words "Federal Reserve System" and inserting "; or";

(4) by inserting after the third clause the following:

"Whoever with intent to defraud the United States or any agency thereof, or any financial institution referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such financial institution—";

(5) by striking "$5,000" and inserting "$1,000,000" and striking "five" and inserting "15";

(6) by striking the period at the end of the first paragraph and inserting the following: "and shall be subject to a civil penalty of $1,000,000 for each day the violation continues or the amount of any pecuniary gain attributable to the proscribed actions, or $5,000,000, whichever is greater. Civil and criminal penalties under this section are cumulative."; and

(7) by inserting "(a)" before "Whoever" at the beginning of the subsection and by adding new subsections (b) and (c) as follows:

"(b) The Attorney General may bring a civil action against any person who violates the provisions of the preceding section. The action may be brought in any district court of the United States or the United States courts of any territory in which the defendant or, in the case of multiple defendants, any one defendant resides, is doing business, may be found, or in which any proscribed act was committed. A subpoena requiring the attendance of a witness at trial or hearing conducted under this provision may be served at any place in the United States. The court in which such action is brought shall determine the existence of a violation upon a preponderance of the evidence, shall assess the civil penalty, and shall have power to grant such other relief, including injunctions, as may be appropriate. Such remedies shall be in addition to any other remedy available under statutory or common law.

"(c)(1) For the purpose of any civil investigation or proceeding under this section, the Attorney General or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

"(2) In case of contumacy by, or refusal to obey a subpoena issued, to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Attorney General or officer designated by the Attorney General to produce records, if so ordered, or to give testimony touching upon the matter under civil investigation or in question. And any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district where such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Attorney General shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.".

(e) FEDERAL CREDIT INSTITUTION ENTRIES, REPORTS, AND TRANSACTIONS.—Section 1006 of title 18, United States Code, is amended—

(1) by striking "$10,000" and inserting "$1,000,000" and by striking "five" and inserting "15";

(2) by striking the period at the end of the section and inserting the following: "and shall be subject to a civil penalty of $1,000,000 for each day the violation continues or the amount of pecuniary gain attributable to the proscribed action, or $5,000,000, whichever is greater. Civil and criminal penalties under this section are cumulative."; and

(3) by inserting "(a)" before "Whoever" and by adding new subsections (b) and (c) as follows:

"(b) The Attorney General may bring a civil action against any person who violates the provisions of the preceding section. The action may be brought in any district court of the United States or the United States courts of any territory in which the defendant or, in the case of multiple defendants, any one defendant resides, is doing business, may be found, or in which any proscribed act was committed. A subpoena requiring the attendance of a witness at trial or hearing conducted under this provision may be served at any place in the United States. The court in which such action is brought shall determine the existence of a violation upon a preponderance of the evidence, shall assess the civil penalty, and shall have power to grant such other relief, including injunctions, as may be appropriate. Such remedies shall be in addition to any other remedy available under statutory or common law.

"(c)(1) For the purpose of any civil investigation or proceeding under this section, the Attorney General or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

"(2) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Attorney General or officer designated by the Attorney General to produce records, if so ordered, or to give testimony touching upon the matter under civil investigation or in question. And any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district where such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Attorney General shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.".

(f) FEDERAL DEPOSIT INSURANCE CORPORATION TRANSACTIONS.—Section 1007 of title 18, United States Code, is amended to read as follows:

"§ 1007. Federal Deposit Insurance Corporation transactions

"(a) Whoever, for the purpose of inducing the insurance of the accounts of any institution by the Federal Deposit Insurance Corporation, for the purpose of obtaining any loan from the Federal Deposit Insurance Corporation, for the purpose of obtaining any extension or renewal of such insurance or such loan, or for the purpose of obtaining the acceptance, release, or substitution of security for such loan, or for the purpose of inducing the Federal Deposit Insurance Corporation to purchase any assets, or for the purpose of obtaining the payment of any insured deposit or transferred deposit or the allowance, approval, or payment of any claim, or for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation, makes, passes, utters, or publishes any statement, knowing it to be false; utters, forges, or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true any instrument, paper or document, knowing it to have been uttered, forged, or counterfeited; or willfully overvalues any security, asset, or income, of any institution insured or applying for insurance by the Federal Deposit Insurance Corporation shall be fined not more than $1,000,000, or imprisoned for not more than 15 years, or both, and shall be subject to a civil penalty of $1,000,000 for each day the violation continues, or the amount of pecuniary gain attributable to the proscribed action, or $5,000,000, whichever is greater. Civil and criminal penalties under this section are cumulative.

"(b) The Attorney General may bring a civil action against any person who violates the provisions of the preceding section. The action may be brought in any district court of the United States or the United States courts of any territory in which the defendant or, in the case of multiple defendants, any one defendant resides, is doing business, may be found, or in which any proscribed act was committed. A subpoena requiring the attendance of a witness at trial or hearing conducted under this provision may be served at any place in the United States. The court in which such action is brought shall determine the existence of a violation upon a preponderance of the evidence, shall assess the civil penalty, and shall have power to grant such other relief, including injunctions, as may be appropriate. Such remedies shall be in addition to any other remedy available under statutory or common law.

"(c)(1) For the purpose of any civil investigation or proceeding under this section, the Attorney General or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

"(2) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Attorney General or officer designated by the Attorney General to produce records, if so ordered, or to give testimony touching upon the matter under civil investigation or in question. And any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district where such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Attorney General shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.".

(g) FSLIC TRANSACTIONS.—

(1) IN GENERAL.—Section 1008 of title 18, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The table of sections of chapter 47 of title 18, United States Code, is amended by striking the item relating to section 1008.

(h) LOANS AND CREDIT APPLICATIONS GENERALLY.—Section 1014 of title 18, United States Code, is amended—

(1) by striking "a Federal Home Loan Bank, the Federal Home Loan Bank Board, the Home Owners' Loan Corporation, a Federal Savings and Loan Association", by striking "the Federal Savings and Loan Insurance Corporation, any bank the deposits of which are insured by", by striking "any member

of", and by inserting "the Resolution Trust Corporation" after "Federal Deposit Insurance Corporation,";

(2) by striking "$5,000" and inserting "$1,000,000" and striking "two" and inserting "15";

(3) by striking the period at the end of the first paragraph and inserting the following: "and shall be subject to a civil penalty of $1,000,000 for each day the violation continues, or the amount of any pecuniary gain attributable to the false statement or report or overvaluation, or $5,000,000, whichever is greater. Civil and criminal penalties under this section are cumulative."; and

(4) by inserting "(a)" before "Whoever" and by adding new subsections (b) and (c) as follows:

"(b) The Attorney General may bring a civil action against any person who violates the provisions of the preceding section. The action may be brought in any district court of the United States or the United States courts of any territory in which the defendant or, in the case of multiple defendants, any one defendant resides, is doing business, may be found, or in which any proscribed act was committed. A subpoena requiring the attendance of a witness at trial or hearing conducted under this provision may be served at any place in the United States. The court in which such action is brought shall determine the existence of a violation upon a preponderance of the evidence, shall assess the civil penalty, and shall have power to grant such other relief, including injunctions, as may be appropriate. Such remedies shall be in addition to any other remedy available under statutory or common law.

"(c)(1) For the purpose of any civil investigation or proceeding under this section, the Attorney General or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

"(2) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Attorney General or officer designated by the Attorney General to produce records, if so ordered, or to give testimony touching upon the matter under civil investigation or in question. And any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district where such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Attorney

General shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000" or to imprisonment for a term of not more than one year, or both.".

(i) **Bank Fraud.**—Section 1344(a) of title 18, United States Code, is amended—

(1) by striking "$10,000" and inserting "$1,000,000" and striking "five" and inserting "15";

(2) by and striking the period at the end and inserting the following: "and shall be subject to a civil penalty of $1,000,000 for each day the violation continues or the amount of pecuniary gain attributable to the fraud, or $5,000,000, whichever is greater. Civil and criminal penalties and restitution under this section are cumulative.";

(3) by striking "bank" and inserting "institution" in subsection (b)(2);

(4) by striking paragraph (4) and redesignating paragraph (5) as paragraph (4); and

(5) by adding at the end the following:

"(c) The Attorney General may bring a civil action against any person who violates the provisions of the preceding section. The action may be brought in any district court of the United States or the United States courts of any territory in which the defendant or, in the case of multiple defendants, any one defendant resides, is doing business, may be found, or in which any proscribed act was committed. A subpoena requiring the attendance of a witness at trial or hearing conducted under this provision may be served at any place in the United States. The court in which such action is brought shall determine the existence of a violation upon a preponderance of the evidence, shall assess the civil penalty, and shall have power to grant such other relief, including injunctions, as may be appropriate. Such remedies shall be in addition to any other remedy available under statutory or common law.

"(d)(1) For the purpose of any civil investigation or proceeding under this section, the Attorney General or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

"(2) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Attorney General or officer designated by the Attorney General to produce records, if so ordered, or to give testimony touching upon the matter under civil investigation or in question. And any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district where such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena or the Attorney General shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.".

(j) FINANCIAL INSTITUTION OFFENSES.—

(1) IN GENERAL.—(A) Chapter 213 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3293. Financial institution offenses

"No person shall be prosecuted, tried, or punished for violation of any provision of sections 215, 656, 657, 1005, 1006, 1007, 1008, 1014, or 1344 of this title, or for conspiracy to commit violations of any of the aforementioned sections, unless the indictment is returned or the information is filed within 10 years after the commission of the offense. This section shall apply to any of the aforementioned offenses committed before the effective date of this section, if the statute of limitations applicable to that offense under this chapter had not run as of the effective date of this section.".

(B) Effective on the first day of January of the year beginning 5 years after the date of enactment of this Act, section 3293 of title 18, United States Code, shall be amended by striking "10 years" and inserting "7 years".

(2) CONFORMING AMENDMENT.—The table of sections of chapter 213 of title 18, United States Code, is amended by adding at the end thereof the following:

"3293. Financial institution offenses.".

(k) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, or 1344 of title 18, United States Code, under circumstances which substantially jeopardize the safety and soundness of a financial institution shall be sentenced to a substantial period of incarceration in addition to the period generally imposable for the underlying offense. If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in this subsection so as to achieve a comparable result.

SEC. 1002. MISCELLANEOUS REVISIONS TO TITLE 18.

(a) USE OF TERM "FEDERAL HOME LOAN BANK SYSTEM".—Title 18, United States Code, is amended by striking "Federal Home Loan Bank Board" wherever it appears and inserting "Office of Savings Associations".

(b) OFFER OF LOAN OR GRATUITY.—Section 212 of title 18, United States Code, is amended—

(1) by striking "bank" or "banks" wherever they appear and inserting "financial institution" or "financial institutions", re-

spectively (except in the phrases "land bank" and "member banks"); and

(2) by inserting "Office of Savings Associations," after "Federal Deposit Insurance Corporation," in the second sentence.

(c) ACCEPTANCE OF LOAN OR GRATUITY.—Section 213 of title 18, United States Code, is amended by striking "banks the deposits of which" and inserting "financial institutions the deposits of which".

(d) RUMORS REGARDING THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION.—

(1) IN GENERAL.—Section 1009 of title 18, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The analysis of chapter 47 of title 18, United States Code, is amended by striking the item relating to section 1009.

(e) COMPUTER FRAUD.—Section 1030(e)(4) of title 18, United States Code, is amended—

(1) by striking "a bank" in subparagraph (A) and inserting "an institution," and

(2) by striking subparagraph (C) and redesignating subparagraphs (D), (E), (F), (G), and (H), as subparagraphs (C), (D), (E), (F), and (G), respectively.

(f) PROTECTION OF UNITED STATES OFFICERS AND EMPLOYEES.—Section 1114 of title 18, United States Code, is amended by striking "the Federal Savings and Loan Insurance Corporation,".

(g) PARTICIPATION IN LOTTERIES.—Section 1306 of title 18, is amended by striking "section 20 of the Federal Deposit Insurance Act, or section 410 of the National Housing Act" and inserting "or section 20 of the Federal Deposit Insurance Act".

(h) OBSTRUCTION OF CRIMINAL INVESTIGATIONS.—Section 1510 of title 18, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c), and

(2) by inserting after subsection (a) the following:

"(b) Whoever, being an officer, director, partner, or employee of a financial institution (as that term is defined in section 3401 of title 12, United States Code), directly or indirectly notifies a customer of that financial institution whose financial records are sought by a grand jury subpoena served on that financial institution, relating to a possible violation of section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, or 1344 of title 18, United States Code, or any other party about the existence or contents of the subpoena or information that has been furnished to the grand jury in response to that subpoena shall be fined under this title or be imprisoned not more than 5 years, or both.".

(i) RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS.—Section 1961(1) of title 18, United States Code, is amended—

(1) by inserting "sections 656 and 657 (relating to financial institution embezzlement)," after "(relating to counterfeiting),";

(2) by inserting "section 1344 (relating to financial institution fraud)," after "(relating to wire fraud),";

(3) by inserting after "Section 201 (relating to bribery)," the following: "section 215 (relating to receipt of commissions or gifts for proving loans),"; and

(4) by inserting after "section 894 (relating to extortionate credit transactions)," the following: "sections 1004, 1005, 1006, 1007, and 1014 (relating to fraud and false statements),".

(j) BANK ROBBERY.—Section 2113 of title 18, United States Code, is amended—

(1) in subsection (f), by striking "any bank the deposits of which" and inserting "any institution the deposits of which";

(2) by inserting before the period at the end of subsection (h) the following: ", and any 'Federal credit union' as defined in section 2 of the Federal Credit Union Act"; and

(3) by striking subsection (g) and redesignating subsection (h) as subsection (g).

SEC. 1003. CIVIL AND CRIMINAL FORFEITURE.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following:

"§ 983. Civil forfeiture relating to certain financial institution violations

"(a) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344 of this title affecting a federally insured financial institution, shall be subject to forfeiture to the United States, except that no property shall be forfeited under this section, to the extent of the interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed or omitted without the knowledge or consent of that owner or lienholder.

"(b) Any property subject to civil forfeiture to the United States under this section may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when the seizure is incident to a lawful arrest or search or if the Attorney General has probable cause to believe that the property is subject to civil forfeiture under this section. In the event of seizure pursuant to this subsection, proceedings under subsection (d) of this section shall be instituted promptly. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

"(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures of property under this section by the Federal Bureau of Investigation, and with respect to custody and forfeitures under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

"(e)(1) Whenever property is forfeited under this section, the Attorney General may sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public.

"(2)(A) The Attorney General shall transfer the property or proceeds from the sale of such property to any Federal financial institution regulatory agency to the extent of such agency's contribution of resources to, or expenses involved in, the seizures and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property; and

"(B) The Attorney General may retain property and proceeds from the sale of such property to the extent of the Attorney General's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property. Such expenses include, but are not limited to, expenses for maintenance of custody, advertising, and court cost.

"(3) Notwithstanding any other provision of law, if the affected financial institution is in receivership, property forfeited pursuant to this section, or proceeds from the sale of such property, less any amount transferred pursuant to subsection (e)(2) of this section, shall be deposited to the General Fund of the Treasury.

"(4) Notwithstanding any other provision of law, if the affected financial institution is not in receivership, property forfeited pursuant to this section, or proceeds from the sale of such property, less any amount transferred pursuant to subsection (e)(2) of this section, shall be deposited to the General Fund of the Treasury or may be made available upon the order of the appropriate Federal financial institution regulatory agency as restitution to that financial institution. Amounts received by the financial institution shall be set off against any amounts later recovered by the institution as compensatory damages in any State or Federal proceeding.

"(5) The United States shall not be liable in any action arising out of a transfer made pursuant to subsection (e) (2), (3), or (4).

"(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(g) The filing of an indictment or information alleging a violation of law which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

"(h) In addition to the venue provided for in section 1395 of title 28 or other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

"§ 984. Criminal forfeiture relating to certain financial institution violations

"(a) Any person convicted of an offense under section 215, 656, 657, 1005, 1007, 1014, or 1344 of this title affecting a federally insured financial institution, shall forfeit to the United States, irrespective of any provision of State law, any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation. The court, in imposing sentence on such person shall order, in addition to any other sentence imposed, that the person forfeit to the United States all property described in this section.

"(b) Property subject to criminal forfeiture under this section includes—

"(1) real property including things growing on, affixed to, and found in land; and

"(2) tangible and intangible personal property, including rights, privileges, interest, claims and securities.

"(c) All right, title and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

"(d)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

"(A) upon the filing of an indictment or information charging a violation of section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344 of this title and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

"(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

"(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

"(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

An order entered pursuant to this subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

"(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

"(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

"(e) Upon conviction of a person under section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344 of this title, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

"(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him.

"(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

"(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of the violation, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

"(2) compromise claims arising under this section;

"(3) award compensation to persons providing information resulting in a forfeiture under this section;

"(4) direct the disposition by the United States of all property ordered forfeited under this section, making due provision for the rights of innocent persons; and

"(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

"(h) Except to the extent that they are inconsistent with the provisions of this section, the provisions of sections 983(d) and 983(e) of this title shall apply to a criminal forfeiture under this section.

"(i) Except as provided in subsection (m) of this section, no party claiming an interest in property subject to forfeiture under this section may—

"(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

"(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

"(j) The district court of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

"(k) In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

"(l)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

"(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

"(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

"(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

"(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

"(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

"(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave right to the forfeiture of the property under this section; or

"(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of the purchase reasonably without cause to believe that the property was subject to forfeiture under this section, the court shall amend the order of forfeiture in accordance with its determination.

"(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

"(m) If any of the property described in subsection (a) of this section, as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any of the property of the defendant up to the value of any property described in paragraph (1) through (5).".

(b) CONFORMING AMENDMENT.—The analysis of chapter 46, United States Code, is amended by adding at the end the following:

"983. Civil forfeiture relating to certain financial institution violations.
"984. Criminal forfeiture relating to certain financial institution violations.".

SEC. 1004. GRAND JURY AMENDMENTS.

(a) IN GENERAL.—Paragraphs (A), (B), and (C) of rule 6(e)(3) of the Federal Rules of Criminal Procedure are amended to read as follows:

"(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to—

"(i) any attorney for the government for use in the attorney's performance of the government's duty to enforce Federal criminal or civil law; and

"(ii) such government personnel (including personnel of a State or subdivision of a State) as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce Federal criminal law.

"(B) Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting an attorney for the government in the performance of such attorney's duty to enforce Federal criminal or civil law. An attorney for the government shall promptly provide the district court, before which was impaneled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made, and shall certify that the attorney has advised such persons of their obligation of secrecy under this rule.

"(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made—

"(i) when so directed by a court, upon a showing of particularized need, preliminarily to or in connection with a judicial proceeding;

"(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

"(iii) when the disclosure is made by an attorney for the government to another Federal grand jury;

"(iv) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such law; or

"(v) at the request of an attorney for the government, and when so permitted by a court upon a showing of substantial need, to personnel of any department or agency of the United States (a) when such personnel are deemed necessary to provide assistance to an attorney for the government in the performance of such attorney's duty to enforce Federal civil law, or (b) for use in relation to any matter within the jurisdiction of such department or agency.".

(b) CONFORMING AMENDMENT.—The first sentence of paragraph (D) of rule 6(e)(3) of the Federal Rules of Criminal Procedure is amended to read as follows:

"(D) A petition for disclosure pursuant to subdivision (e)(3)(C)(i) or (v) shall be filed in the district where the grand jury convened.".

(c) FAIR CREDIT REPORTING ACT.—Paragraph (1) of section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended by inserting before the period at the end the following: ", or a subpoena issued in connection with proceedings before a Federal grand jury".

SEC. 1005. LITIGATION AUTHORITY.

Nothing in this Act may be construed as impairing or diminishing the authority of the Attorney General under section 516 of title 28, United States Code, to conduct and coordinate litigation on behalf of the United States Government.

SEC. 1006. DEPARTMENT OF JUSTICE APPROPRIATION.

There are authorized to be appropriated, to appropriations under control of the Attorney General, $50,000,000 for each of the fiscal years 1989, 1990, and 1991, for the purpose of conducting investigations, prosecutions, and civil proceedings involving financial institutions subject to the provisions of this Act. Such funds shall remain available to the Attorney General without fiscal year limitation.

TITLE XI—FEDERAL HOME LOAN MORTGAGE CORPORATION

SEC. 1101. SHORT TITLE.

This title may be cited as the "Federal Home Loan Mortgage Corporation Transition Act".

SEC. 1102. PURPOSE.

The purposes of this title are—

(1) to provide stability in the secondary market for home mortgages,

(2) to provide that the operations of the Federal Home Loan Mortgage Corporation respond appropriately to the private capital market, and

(3) to ensure that the Federal Home Loan Mortgage Corporation continues to provide supplementary assistance to the secondary market for home mortgages by providing a degree of liquidity for mortgage investments thereby improving the distri-

bution of investment capital available for home mortgage financing.

SEC. 1103. TRANSITION OF BOARD.

(a) NEW BOARD.—Section 303(a) of the Federal Home Loan Mortgage Corporation Act is amended to read as follows:

"(a)(1) There is created the Federal Home Loan Mortgage Corporation, which shall be a body corporate and shall be under the direction of a Board of Directors. Within the limitations of law and regulation, the Board of Directors shall determine the general policies which shall govern the operations of the Corporation. The principal office of the Corporation shall be in the District of Columbia or at such other place as the Corporation may from time to time prescribe.

"(2) The Corporation shall have a Board of Directors which shall consist of 18 persons, 5 of whom shall be appointed annually by the President of the United States, and the remainder of whom shall be elected annually by the voting common stockholders. The Board of Directors shall at all times have as members appointed by the President of the United States at least one person from the homebuilding industry, at least one person from the mortgage lending industry, and at least one person from the real estate industry. Each member of the Board of Directors shall be appointed or elected for a term ending on the date of the next annual meeting of the voting common stockholders, except that any such member may be removed from office by the President of the United States for good cause. Any appointive seat which becomes vacant shall be filled by appointment of the President of the United States, but only for the unexpired portion of the term. Any elective seat on the Board of Directors which becomes vacant after the annual election of the directors shall be filled by the Board of Directors, but only for the unexpired portion of the term. Any member of the Board of Directors who is a full-time officer or employee of the Federal Government shall not, as such member, receive compensation for services as such a member.".

(b) TRANSITIONAL PROVISION.—There shall be an interim Board of Directors of the Federal Home Loan Mortgage Corporation which shall serve from the date of enactment of this section until the date of the first meeting of the voting common shareholders of the Corporation at which the first election of the directors elected by the shareholders occurs. The interim Board of Directors shall consist of the President of the Corporation, the persons who were, on the day prior to the date of enactment of this section, the Chairman of the Federal Home Loan Bank Board, or his or her designee, and the Secretary of the Department of Housing and Urban Development, or his or her designee. A quorum of the interim Board of Directors shall consist of a majority of the directors duly serving from time to time. The first meeting for election of directors shall occur, under such procedures as shall be specified by the Corporation, within 6 months following the date of enactment of this section.

SEC. 1104. REGULATORY POWER.

Section 303 of the Federal Home Loan Mortgage Corporation Act is amended—

(1) by redesignating sections (b) through (f) as sections (c) through (g) respectively, and

(2) by inserting after subsection (a) the following:

"(b)(1) The Secretary of Housing and Urban Development shall have general regulatory power over the Corporation, and shall make such rules and regulations as shall be necessary and proper to ensure that the purposes of this title are accomplished. The Secretary may require that a reasonable portion of the Corporation's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to the Corporation. In any one fiscal year, the aggregate amount of cash dividends paid by the Corporation on account of any share of its common stock shall not exceed any rate which may be determined from time to time by the Secretary to be a fair rate of return after consideration of the current earnings and capital condition of the Corporation. The Secretary may examine and audit the books and financial transactions of the Corporation, and the Secretary may require the Corporation to make such reports on its activities as he deems advisable. Pursuant to the authority provided in this subsection, the Secretary shall, not later than June 30 of each year, report to the Congress on the activities of the Corporation under this title.

"(2) The aggregate amount of notes, debentures, or substantially identical types of unsecured obligations of the Corporation evidencing money borrowed outstanding at any one time shall not exceed 15 times the sum of the Corporation's capital, capital surplus, general surplus, reserves, and undistributed earnings unless a greater ratio shall be fixed at any time or from time to time by the Secretary of Housing and Urban Development. The outstanding total principal amount of any obligations of the Corporation which are entirely subordinated to the general debt obligations of the Corporation shall be deemed to be capital of the Corporation for the purpose of determining the aggregate amount of notes, debentures, or substantially identical types of unsecured obligations which may be outstanding at any one time.

"(3) All issuances of stock, and debt obligations convertible into stock, by the Corporation shall be made only with the approval of the Secretary of Housing and Urban Development.

"(4) The exercise of the Corporation's authority pursuant to commitments or otherwise to purchase, service, sell, lend on the security of or otherwise deal in conventional residential mortgages under section 305(a) of this title is subject to the approval of the Secretary of Housing and Urban Development. Any conventional mortgage programs or activities with respect to purchasing, servicing, selling, lending on the security of or otherwise dealing in mortgages in which the Corporation has engaged or is engaging as of the effective date of this subsection shall be deemed to have been approved by the Secretary of Housing and Urban Development as required by this subsection.

"(5) If the Corporation submits to the Secretary of Housing and Urban Development a request for approval or other action under this title, the Secretary shall, not later than the expiration of the 45-day period following the submission of such request, approve such request or transmit to the Congress a report explaining why such request has not been approved. Such period may be extended for an additional 15-day period if the Secretary requests additional information from the Corporation, but such 45-day period may not be extended for any other reason or for any period in addition to or other than such 15-day period. If the Secretary fails to transmit such report to the Congress within such 45-day period or 60-day period, as the case may be, the Corporation may proceed as if such request had been approved.".

SEC. 1105. COMMON STOCK.

(a) In General.—Section 304(a) of the Federal Home Loan Mortgage Corporation Act is amended to read as follows:

"(a)(1) The common stock of the Corporation shall consist of—

"(A) nonvoting common stock, which shall be issued only to Federal home loan banks, and

"(B) voting common stock, which shall be issued to such holders, in such manner and amount, and subject to such limitations on concentration of ownership, as the Corporation prescribes.

"(2) The nonvoting common stock and the voting common stock shall have such par value and such other characteristics as the Corporation prescribes. The voting common stock shall be vested with all voting rights, each share being entitled to one vote. The free transferability of the voting common stock at all times to any person, firm, corporation or other entity shall not be restricted except that, as to the Corporation, it shall be transferable only on the books of the Corporation. Nonvoting common stock of the Corporation shall be evidenced in such manner and shall be transferable only to such extent, to such transferees, and in such manner, as the Corporation prescribes.".

(b) Conversion of Stock.—On the date of enactment of this Act, each share of outstanding senior participating preferred stock of the Federal Home Loan Mortgage Corporation, with a par value of $2.50 per share, shall be changed into and shall become one share of voting common stock of the Corporation. Such voting common stock shall, with respect to the nonvoting common stock of the Corporation, retain all of the rights, priorities and privileges of the senior participating preferred stock and the transformation of the senior participating preferred stock into voting common stock accomplished by this subsection shall be deemed to satisfy the Corporation's obligation to redeem senior participating preferred stock for noncallable common stock.

(c) Conforming Amendments.—(1) Section 304(b) of the Federal Home Loan Mortgage Corporation Act is amended by inserting "nonvoting" before "common".

(2) Section 304(c) of the Federal Home Loan Mortgage Corporation Act is amended by striking "such" and by inserting "nonvoting common" before the word "stock".

(3) Section 304(d) of the Federal Home Loan Mortgage Corporation Act is amended by inserting "nonvoting common" before "stock" each time it appears.

SEC. 1106. FEES.

Section 305(a)(1) of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end thereof: "Nothing in this section authorizes the Corporation to impose any charge or fee upon any mortgagee approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act solely because of such status".

SEC. 1107. STANDBY CREDIT.

Section 306(c) of the Federal Home Loan Mortgage Corporation Act is amended to read as follows:

"(c) The Secretary of the Treasury is authorized in his or her discretion to purchase any obligations issued pursuant to subsection (a) of this section, as now or hereafter in force, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include such purposes. The Secretary of Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this subsection to an amount greater than $2,250,000,000, and such purchases may be made only to such extent or in such amounts as are approved in appropriation Acts. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.".

SEC. 1108. TERMS OF OBLIGATIONS.

Section 306 of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end the following:

"(j) Any notes, debentures, or substantially identical types of unsecured obligations of the Corporation evidencing money borrowed, whether general or subordinated, shall be issued upon the approval of the Secretary of the Treasury and shall have such maturities and bear such rate or rates of interest as may be determined by the Corporation with the approval of the Secretary of the Treasury. Any notes, debentures, of substantially identical types of unsecured obligations of the Corporation having maturities of one year or less which the Corporation has issued or is issuing as of the effective date of this subsection shall be deemed to have been approved by the Secretary of the Treasury as required by this subsection. The Secretary of the Treasury, upon reasonable notice to the Corporation, may revoke any approval as to issuance or as to maturity or rate with respect to securities having maturities of one year or less. Any notes, debentures, or substantially identical types of unsecured obligations of the Corporation having maturities of more than one year which the Corporation has issued or is issuing as of the effective date of this subsection shall be deemed to have been approved by the Secretary of the Treasury as required by this subsection. Such deemed approval shall expire 60 days following enactment of this subsection.

"(k) Any securities in the form of debt obligations or trust certificates of beneficial interest, or both, and based upon mortgages held and set aside by the Corporation shall be issued upon the approval of the Secretary of the Treasury and shall have such maturities and shall bear such rate or rates of interest as may be determined by the Corporation with the approval of the Secretary of the Treasury. Any securities in the form of debt obligations or trust certificates of beneficial interest, or both, and based upon mortgages held and set aside by the Corporation, which the Corporation has issued or is issuing as of the effective date of this subsection shall be deemed to have been approved by the Secretary of the Treasury as required by this subsection.".

SEC. 1109. COLLATERALIZED MORTGAGE OBLIGATIONS.

(a) AUTHORITY.—Section 305(a) of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end the following:

> "(5) The Corporation is authorized to lend on the security of, and to make commitments to lend on the security of, any mortgage which it is authorized to purchase under this section. The volume of the Corporation's lending activities and the establishment of its loan ratios, interest rates, maturities, and charges or fees, in its operations under this paragraph, should be determined by the Corporation from time to time; and such determinations should be consistent with the objectives that the lending activities should be conducted on such terms as will reasonably prevent excessive use of the Corporation's facilities, and that the operations of the Corporation under this paragraph should be within its income derived from such operations and that such operations should be fully self-supporting. The Corporation shall not be permitted to use its lending authority under this paragraph (i) to advance funds to a mortgage seller on an interim basis, using mortgages as collateral, pending the sale of the mortgages in the secondary market, or (ii) to originate mortgage loans. Notwithstanding any Federal, State, or other law to the contrary, the Corporation is hereby empowered in connection with any loan under this paragraph, whether before or after any default, to provide by contract with the borrower for the settlement or extinguishment, upon default, of any redemption, equitable, legal, or other right, title, or interest of the borrower in any mortgage or mortgages that constitute the security for the loan; and with respect to any such loan, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such security shall become the absolute property of the Corporation.".

(b) LIMITATION.—Section 304(a)(2) of the Federal National Mortgage Association Charter Act is amended by deleting the first and second sentences and adding the following after the third sentence:

"The Corporation shall not be permitted to use its lending authority (i) to advance funds to a mortgage seller or originator on an interim basis, using mortgage loans as collateral, pending the sale of the mortgages in the secondary market, or (ii) to originate mortgage loans.".

TITLE XII—PARTICIPATION BY STATE HOUSING FINANCE AUTHORITIES AND NONPROFIT ENTITIES

SEC. 1201. DEFINITIONS.

For the purposes of this title—

(1) The term "State housing finance authority" means any public agency, authority, corporation, or other instrumentality of a State or political subdivision thereof which functions as a source or residential mortgage loan financing in any such State or as a public housing agency.

(2) The term "nonprofit entity" means any not-for-profit corporation chartered under State law (including any nonprofit entity established by the corporation established under title IX of the Housing and Urban Development Act of 1968).

(3) The term "mortgage related assets" means (A) residential mortgage loans secured by one-to-four family or multi-family dwellings, and (B) real property improved with one-to-four family or multi-family residential dwellings, in all such cases located within the jurisdiction of the applicable State housing finance authority.

(4) The term "net income" shall mean income after deduction of all associated expenses calculated in accordance with generally accepted accounting principles.

SEC. 1202. STATE HOUSING FINANCE AUTHORITY AND NONPROFIT ENTITY AUTHORIZATION.

Notwithstanding any other provision of law, State or Federal, or the constitution of any State, State housing finance authorities and nonprofit entities are authorized to purchase mortgage related assets from the Resolution Trust Corporation or from financial institutions with respect to which the Federal Deposit Insurance Corporation is acting as a receiver or conservator (including the assets associated with any trust business), any contract for such purchase to be effective in accordance with its terms without any further approval, assignment, or consent with respect thereto. Any State housing finance authority or nonprofit entity purchasing mortgage related assets hereunder shall be required to invest net income attributable to the ownership of such assets in the financing, refinancing, or rehabilitation of low and moderate income housing within the jurisdiction of any such State housing finance authority or nonprofit entity.

TITLE XIII—STUDY OF FEDERAL DEPOSIT INSURANCE AND BANKING REGULATION

SEC. 1301. STUDY.

The Secretary of the Treasury, in consultation with the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Office of Savings Associations, the Chairman of the Federal Deposit Insurance Corporation, the Chairman of the National Credit Union Administration Board, and the Director of the Office of Management and the Budget, shall conduct a study of the Federal deposit insurance system, including an appropriate structure for the offering of competitive products and services to consumers consistent with standards of safety and soundness.

SEC. 1302. TOPICS.

As part of such study, the Secretary shall investigate, review and evaluate—

(1) risk and rate structure for deposit insurance;

(2) incentives for market discipline, including supplementary private insurance;

(3) the scope of deposit insurance coverage and its impact on the liability of the insurance fund, including consideration of making the large depositor a coinsurer of a portion of the deposit exceeding $10,000 but less than $100,000;

(4) the feasibility of market value accounting, assessments on foreign deposits, limitations on brokered deposits, the addition of collateralized borrowings to the deposit insurance base, and multiple insured accounts;

(5) policies to be followed with respect to the recapitalization or closure of insured depositories whose capital is depleted to or near the point of, insolvency;

(6) the feasibility of developing and administering, through the appropriate Federal banking agency, an examination on the principles and techniques of risk management and their application to the management of insured institutions;

(7) the efficiency of housing subsidies through the Federal Home Loan Bank System; and

(8) the adequacy of capital of insured credit unions and the National Credit Union Share Insurance Fund, including whether the supervision of that fund should be separated from the other functions of the National Credit Union Administration.

SEC. 1303. FINAL REPORT.

The Secretary shall submit to Congress within 18 months from the date of enactment of this Act, a final report which shall contain a detailed statement of findings and conclusions, including recommendations for such administrative and legislative actions as the Secretary deems advisable.

TITLE XIV—MISCELLANEOUS PROVISIONS

SEC. 1401. GAO STUDY OF CREDIT UNION SYSTEM.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a comprehensive study of the Nation's credit union system. In conducting the study, the Comptroller General shall examine—

(1) credit unions' present and future role in the financial marketplace,

(2) the financial condition of credit unions,

(3) credit union capital,

(4) credit union regulation and supervision on both the Federal and State levels,

(5) the credit union common bond,

(6) the structure and financial condition of the National Credit Union Share Insurance Fund, including whether supervision of that Fund should be separated from the other functions of the National Credit Union Administration Board; and

(7) such other matters as the Comptroller General deems appropriate.

Comparative information with other types of financial institutions should be included.

(b) SUBMISSION.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a final report which shall contain a detailed statement of findings and conclusions, including recommendations for such administrative and legislative action as the Comptroller General deems advisable.

SEC. 1402. CREDIT UNION REGULATOR SALARIES.

(a) IN GENERAL.—Section 120(i)(1) of the Federal Credit Union Act (12 U.S.C. 1766(i)(1)) is amended—

(1) by inserting a comma after "personnel"; and

(2) by inserting after "functions" the following: ", who shall be paid such compensation as shall be determined by the Board without regard to the provisions of any law or regulation (including, but not limited to, provisions of title 5, United States Code, relating to Federal employee and officer compensation)".

(b) TREATMENT OF FUNDS.—Section 120 of the Federal Credit Union Act (12 U.S.C. 1766) is amended by adding at the end the following:

"(j) In setting and adjusting compensation under subsection (i)(1), the Board shall consult and seek to maintain comparability with the compensation at the other Federal bank regulatory agencies and shall report thereon to the Congress. The salaries and expenses of the Board and its employees shall be paid from fees and assessments (including income earned on insured deposits) levied on credit unions under the Federal Credit Union Act, and such fees and assessments shall not be construed to be government monies or appropriated monies, or subject to apportionment for the purposes of title 31 or any other authority.".

SEC. 1403. AMENDMENT TO SECTION 203 OF THE FEDERAL CREDIT UNION ACT.

Section 203 of the Federal Credit Union Act (12 U.S.C. 1783) is amended by striking "deposits and" in paragraph (b).

SEC. 1404. AMENDMENT TO SECTION 5240 OF THE REVISED STATUTES.

Section 5240 of the Revised Statutes (12 U.S.C. 482) is amended—

(1) by striking the first sentence of the third paragraph;

(2) by inserting in lieu thereof the following: "The Comptroller of the Currency may fix the compensation of employees of the Office of the Comptroller of the Currency and shall make a report thereof to the Congress. Such compensation shall be determined solely by the Comptroller and without regard to the provisions of any law or regulation (including, but not limited to, provisions of title 5, United States Code, relating to Federal employee and officer compensation). In setting and adjusting such compensation, the Comptroller shall consult and seek to maintain comparability with the compensation at the other Federal bank regulatory agencies."; and

(3) by adding at the end the following:

"Whenever the Comptroller submits any budget estimate or request to any officer or employee in the executive branch of the Government, including the President or the Office of Management and Budget, the Comptroller shall concurrently transmit copies of that estimate or request to the Congress. Whenever the Comptroller transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit copies thereof to the Congress. No officer or agency of the United States shall have any authority to require the Comptroller to submit legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Comptroller voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Comptroller shall include a description of such actions in legislative recommendations, testimony, or comments on legislation which is transmitted to the Congress.".

SEC. 1405. GAO AUDIT OF ALL ORGANIZATIONS CARRYING OUT FUNCTIONS UNDER THE ACT.

(a) IN GENERAL.—All agencies, corporations, organizations, and other entities of any description which perform any functions or activities under this Act (including its amendments to other laws) shall be subject to audit by the Comptroller General of the United States with respect to such functions or activities. All persons and organizations which, by contract, grant, or otherwise, provide goods or services to or receive financial assistance from any entity performing functions of activities under this Act shall be subject to audit by the Comptroller General with respect to such provision of goods or services or receipt of financial assistance.

(b) AUTHORITY OF COMPTROLLER GENERAL.—The Comptroller General shall determine the nature, scope, terms, and conditions of audits conducted under this section. The Comptroller General's authority under this section shall be in addition to any audit authority available to the Comptroller General under other provisions of this Act or any other law.

(c) ACCESS TO BOOKS AND RECORDS.—The Comptroller General and any duly authorized representatives shall have access to and the right to examine and copy all records and other recorded information in any form, and to examine any property, within the agencies, boards, corporations, and other organizations subject to audit under this section, where the Comptroller General deems relevant to an audit conducted under this section. The Comptroller General's right of access to information under this section shall be enforceable pursuant to section 716 of title 31, United States Code. The provisions of section 716(e) of such title shall apply to information obtained by the Comptroller General under this section.

SEC. 1406. REPORT ON LOAN DISCRIMINATION.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Housing and Urban Development, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Chairman of the Office of Savings Associations, shall each transmit to the Congress a report containing—

(1) findings, based on a review of currently available loan acceptance and rejection statistics, on the extent of discriminatory lending practices by mortgage lenders subject to regulation or supervision by such agency; and

(2) recommendations for appropriate measures to assure nondiscriminatory lending practices.

(b) SCOPE OF HUD REPORT.—The Secretary of Housing and Urban Development may exclude from the report under subsection (a) any data pertaining to mortgage lenders which are approved mortgagees under title II of the National Housing Act if data pertaining to such lenders is or will be included in the other reports under such subsection.

SEC. 1407. EQUAL OPPORTUNITY.

(a) IN GENERAL.—For purposes of this Act, the following Executive Order 11478, providing for equal employment opportunity in the Federal Government, shall apply to—

(1) the Comptroller of the Currency;
(2) the Chairman of the Office of Savings Associations;
(3) the Federal Home Loan Banks;
(4) the Federal Deposit Insurance Corporation;
(5) the Federal Home Loan Mortgage Corporation;
(6) the Federal National Mortgage Association;
(7) the Resolution Trust Corporation; and
(8) the Resolution Finance Corporation.

(b) SOLICITATION OF CONTRACTS.—The Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Chairman of the Office of Savings Associations, the Federal Home Loan Bank Agency, the Resolution Finance Corporation, and the Resolution

Trust Corporation shall establish programs which solicit businesses with majority ownership by minorities or women and provide these businesses with an opportunity for participation in the procurement program of each such agency. The Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association are encouraged to establish policies and goals to foster participation in their respective procurement programs by such businesses.

SEC. 1408. ANNUAL REPORT ON THE CONDITION OF THE FEDERAL DEPOSIT INSURANCE FUNDS.

(a) IN GENERAL.—On or before January 31 of each year commencing on January 31, 1990, the Federal Deposit Insurance Corporation shall deliver a detailed written report and analysis to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate—

(1) the current financial condition of the Bank Insurance Fund and the Savings Association Insurance Fund;

(2) the current level of the Economic Factors;

(3) the exposure of each insurance fund to insured losses if no changes occur in the Economic Factors;

(4) the exposure of each insurance fund to insured losses under reasonably possible changes in each of the Economic Factors, including worst case reasonably possible scenarios for each individual factor and an aggregate worst case reasonably possible scenario for all factors combined; and

(5) background information on historic levels and variations in each of the Economic Factors to substantiate the reasonableness of the scenarios presented.

(b) ECONOMIC FACTORS.—For purposes of this section, the Economic Factors shall include the following factors:

(1) the general level of interest rates;

(2) the general volatility of interest rates;

(3) the shape of the yield curve for United States Treasury obligations;

(4) the spread relationship between interest rates paid on United States Treasury obligations and interest rates paid on obligations of insured financial institutions;

(5) the default rate on outstanding loans held by insured financial institutions; and

(6) the rate of prepayments on fixed and variable rate loans held by insured financial institutions.

SEC. 1409. CAPITAL AND ACCOUNTING STANDARDS.

Within one year from the date of enactment of the FIRRE Act, the appropriate Federal banking agencies, as defined in section 8 of the Federal Deposit Insurance Act, shall establish uniform accounting standards to be used for determining the capital ratios of all federally insured financial institutions and for other regulatory purposes. Each Federal banking agency must report annually to the Chairman and ranking minority member of the Senate and House Banking Committees any differences between the capital standard used by such agency and capital standards used by other agencies. This report shall contain an explanation of the reasons for the discrepancies in such capital standards, and shall be published in the Federal Register.

SEC. 1410. CROSS-MARKETING RESTRICTIONS.

Section 4(f)(3)(B)(ii) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(3)(B)(ii)) is amended by striking "by or through an affiliate (other than an affiliate that engages only in activities permissible for bank holding companies under subsection (c)(8))" and inserting "in connection with products and services of an affiliate that are not permissible for a bank holding company to provide under subsection (c)(8)".

SEC. 1411. ESTABLISHMENT OF APPRAISAL SUBCOMMITTEE OF THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.

(a) IN GENERAL.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

"SEC. 1010. APPRAISAL SUBCOMMITTEE.

"(a) ESTABLISHMENT.—There shall be established within the Council a subcommittee to be known as the 'Appraisal Subcommittee', which shall consist of the designees of the heads of the Federal financial institutions regulatory agencies. Each such designee shall be a person who has demonstrated knowledge and competence concerning the appraisal profession.

"(b) FUNCTIONS OF APPRAISAL SUBCOMMITTEE.—

"(1) IN GENERAL.—The Appraisal Subcommittee shall—

"(A) monitor the requirements established by States for the certification and licensing of persons who are qualified to perform appraisals in connection with federally related transactions, including codes of professional responsibility;

"(B) monitor the requirements established by the Federal financial institutions regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Resolution Trust Corporation with respect to—

"(i) appraisal standards for federally related transactions under their jurisdiction, and

"(ii) determinations as to which federally related transactions under their jurisdiction require the services of a State certified appraiser and which require the services of a State licensed appraiser;

"(C) maintain a national registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions; and

"(D) transmit an annual report to the Congress not later than January 31 of each year which describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year.

"(2) MONITORING AND REVIEWING FOUNDATION.—The Appraisal Subcommittee shall monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation.

"(c) CHAIRMANSHIP OF APPRAISAL SUBCOMMITTEE; TERM OF CHAIRMAN; MEETINGS.—

"(1) CHAIRMAN.—The Council shall elect the Chairman of the Subcommittee. The term of the Chairman shall be 2 years.

"(2) MEETINGS; QUORUM; VOTING.—The Appraisal Subcommittee shall meet at the call of the Chairman or a majority of its members so often as there is business to be conducted. A majority of the members of the Appraisal Subcommittee shall constitute a quorum but 2 or more members may hold hearings. Decisions of the Appraisal Subcommittee shall be made by a vote of a majority of its members.

"(d) OFFICERS AND STAFF.—The Chairman of the Appraisal Subcommittee shall, subject to the provisions of title 5, United States Code, relating to the competitive service, classification and General Schedule pay rates, appoint such officers and staff as may be necessary to carry out the functions under this section.

"(e) POWERS OF APPRAISAL SUBCOMMITTEE.—The Appraisal Subcommittee may, for the purpose of carrying out this section, establish advisory committees, hold hearings, sit and act at times and places, take testimony, receive evidence, provide information, and perform research, as the Appraisal Subcommittee considers appropriate.

"(f) PROCEDURES FOR ESTABLISHING APPRAISAL STANDARDS AND REQUIRING THE USE OF CERTIFIED AND LICENSED APPRAISERS.—Appraisal standards and requirements for using State certified and licensed appraisers pursuant to this section shall be prescribed in accordance with procedures set forth in section 553 of title 5, United States Code, including the publication of notice and receipt of written comments or the holding of public hearings with respect to any standards or requirements proposed to be established.

"(g) AUTHORIZATION OF APPROPRIATIONS.—For purposes of this section, there are authorized to be appropriated to the Appraisal Subcommittee a one-time payment of $5,000,000 for the 24-month period beginning on the date of the enactment of this section. Thereafter, expenses of the Subcommittee shall be funded through the collection of registration fees from certain certified and licensed appraisers pursuant to subsection (h).

"(h) AUTHORITY TO COLLECT FEES.—

"(1) COLLECTION OF FEES.—The Appraisal Subcommittee may collect from each person who receives a State certification or license in accordance with this section and who seeks to perform appraisals in federally related transactions an annual registration fee of not more than $25.

"(2) USE OF AMOUNTS APPROPRIATED OR COLLECTED.—Amounts appropriated for or collected by the Appraisal Subcommittee under this section shall be used—

"(A) to maintain a registry of persons who are qualified and eligible to perform appraisals in connection with federally related transactions;

"(B) to support activities under this section;

"(C) to reimburse the General Fund of the Treasury for amounts appropriated to and expended by the Appraisal Subcommittee during the 24-month startup period following the date of the enactment of this section; and

"(D) to make grants in such amounts as it deems appropriate to the Appraisal Foundation to help defray those costs of the Foundation relating to the activities of its Appraisal Standards and Appraiser Qualification Boards.

"(3) ADJUSTMENTS.—Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registration fees as necessary to carry out its functions under this section.

"(i) APPRAISAL REFORM FUNCTIONS OF THE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES.—Each Federal financial institutions regulatory agency, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation, shall issue rules—

"(1) prescribing appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each such agency or instrumentality. These rules shall require, at a minimum, that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. Each such agency or instrumentality may require compliance with additional standards if it makes a determination in writing that such additional standards are required in order to properly carry out its statutory responsibilities; and

"(2) in accordance with section 1111 of this section, prescribing which categories of real estate related financial transactions shall be appraised by a State certified appraiser and which by a State licensed appraiser under this section.

"(j) TIME FOR PROPOSAL AND ADOPTION OF STANDARDS.—Appraisal standards established under this section shall be proposed not later than 6 months, and shall be effective upon adoption in final form not later than 12 months, after the date of the enactment of this section.

"(k) TRANSACTIONS REQUIRING THE SERVICES OF A STATE CERTIFIED APPRAISER.—In determining whether an appraisal in connection with a federally related transaction shall be performed by a State certified appraiser, an agency or instrumentality under this section shall consider whether the transactions, either individually or collectively, are of sufficient financial or public policy importance to the United States that an individual who performs an appraisal in connection with such transactions shall be a State certified appraiser; however, a State certified appraiser shall be required for all federally related transactions which involve the appraisal of real property having a value of $1,000,000 or more. One-to-four unit, single family residential appraisals may be performed by State licensed appraisers, unless the size and complexity require a State certified appraiser.

"(l) TRANSACTIONS REQUIRING THE SERVICES OF A STATE LICENSED APPRAISER.—All federally related transactions not requiring the services of a State certified appraiser may be performed by either a State certified or licensed appraiser.

"(m) TIME FOR PROPOSAL AND ADOPTION OF RULES.—Rules issued under subsections (k) and (l) shall be proposed not later than 6 months, and shall be effective upon adoption in final form not later than 12 months, after the date of the enactment of this section.

"(n) CERTIFICATION AND LICENSING REQUIREMENTS.—As used in this section—

"(1) DEFINITIONS.—

"(A) the term 'State certified real estate appraiser' shall mean a person who currently has satisfied the requirements for State certification in a State or territory whose criteria for certification as a real estate appraiser currently meet the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation; and

"(B) the term 'State licensed appraiser' shall mean a person who currently has satisfied the requirements for State licensing in a State or territory.

"(2) RESTRICTION.—No person may be deemed a 'State certified real estate appraiser' under this section unless such person has achieved a passing grade upon a suitable examination administered by a State or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board of the Appraisal Foundation.

"(3) ADDITIONAL CERTIFICATION AUTHORITY.—Nothing in this section shall be construed to prevent any Federal agency or instrumentality from establishing such additional certification criteria as may be necessary or appropriate to carry out the statutory responsibilities of such department, agency or instrumentality.

"(o) ESTABLISHMENT OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.—To assure the availability of State certified and licensed appraisers for the performance in a State of appraisals in federally related transactions and to assure effective supervision of the activities of certified and licensed appraisers, a State may establish a State appraiser certifying and licensing agency.

"(p) MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.—

"(1) IN GENERAL.—The Appraisal Subcommittee shall monitor State appraiser certifying and licensing agencies for the purpose of determining whether an agency's policies, practices and procedures are consistent with this section. The Committee shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices or procedures are found to be inconsistent with this section.

"(2) DISAPPROVAL BY APPRAISAL SUBCOMMITTEE.—The Federal financial institutions regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Resolution Trust Corporation shall accept certifications and licenses awarded by a State appraiser certifying and licensing agency unless the Appraisal Subcommittee issues a written finding that—

"(A) the State agency fails to recognize and enforce the standards, requirements, and procedures prescribed pursuant to this section;

"(B) the State agency is not granted authority by the State which is adequate to permit the agency to carry out its functions under this section; or

"(C) the State agency fails to make decisions concerning appraisal standards, appraiser qualifications and supervision of appraiser practices in conformance with this section.

"(3) REJECTION OF CERTIFICATIONS AND LICENSES BY STATE AGENCIES.—

"(A) OPPORTUNITY TO BE HEARD OR CORRECT CONDITIONS.—Before refusing to recognize a State's appraiser certifications or licenses, the Appraisal Subcommittee shall provide that State's certifying and licensing agency written notice of its intention not to recognize the State's certified or licensed appraisers and ample opportunity to provide rebuttal information or to correct the conditions causing the refusal.

"(B) ADOPTION OF PROCEDURES.—The Appraisal Subcommittee shall adopt written procedures for taking action described in this subsection.

"(C) JUDICIAL REVIEW.—A decision of the Appraisal Subcommittee under this subsection shall be subject to judicial review.

"(q) RECOGNITION OF STATE CERTIFIED AND LICENSED APPRAISERS FOR PURPOSES OF THIS SECTION.—

"(1) EFFECTIVE DATE FOR USE OF CERTIFIED OR LICENSED APPRAISERS ONLY.—

"(A) IN GENERAL.—No later than July 1, 1991, all appraisals performed in connection with federally related transactions and for other Federal purposes shall be performed only by persons certified or licensed in accordance with the requirements of this section.

"(B) EXTENSION OF EFFECTIVE DATE.—Subject to the approval of the Council, the Appraisal Subcommittee may extend, until December 31, 1991, the effective date for the use of certified or licensed appraisers if it makes a written finding that a State has made substantial progress in establishing a State certification and licensing system that appears to conform to the provisions of this section.

"(2) TEMPORARY WAIVER OF APPRAISER CERTIFICATION OR LICENSING REQUIREMENTS FOR STATES HAVING SCARCITY OF QUALIFIED APPRAISERS.—Subject to the approval of the Council, the Appraisal Subcommittee may waive any requirement relating to the certification or licensing of a person to perform appraisals under this section if—

"(A) the Appraisal Subcommittee, or a State agency whose certifications and licenses are in compliance with this section, makes a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with federally related transactions or the requirement would lead to inordinate delays in the performance of such appraisals; and

"(B) the waiver terminates when the Appraisal Subcommittee determines that such inordinate delays have been eliminated.

"(3) REPORTS TO STATE CERTIFYING AND LICENSING AGENCIES.—The Appraisal Subcommittee or any other Federal agency or instrumentality shall report any action of a State certified or licensed appraiser that is contrary to the requirements of this section to the appropriate State agency for a disposition of the subject of the referral. The State agency shall provide the Subcommittee or the other Federal agency or instrumentality with a report on its disposition of the matter referred. Subsequent to such disposition, the Subcommittee or the other Federal agency or instrumentality may take such further action, pursuant to written procedures, as it deems necessary to carry out the purposes of this section.

"(r) VIOLATIONS IN OBTAINING AND PERFORMING APPRAISALS IN FEDERALLY RELATED TRANSACTIONS.—

"(1) VIOLATIONS.—Except as authorized by the Appraisal Subcommittee in exercising its waiver authority pursuant to subsection (q), it shall be a violation of this section—

"(A) for a financial institution to knowingly seek, obtain, or give money or any other thing of value in exchange for the performance of an appraisal by a person who is not a State certified or licensed appraiser in connection with a federally related transaction; and

"(B) for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Resolution Trust Corporation to knowingly contract for the performance of any appraisal by a person who is not a State certified or licensed appraiser in connection with a federally related transaction to which such association or corporation is a party.

"(2) PENALTIES.—A financial institution that violates paragraph (a)(1) shall be subject to a civil penalty of not more than $25,000 for the first violation, and not more than $50,000 for each subsequent violation.

"(3) PROCEEDING.—

"(A) IN GENERAL.—A proceeding with respect to a violation of this section shall be an administrative proceeding which may be conducted by a State appraiser certifying and licensing agency or by a Federal financial institution regulatory agency in accordance with the procedures set forth in subchapter II of chapter 5 of section 5, United States Code.

"(B) JUDICIAL REVIEW.—Notwithstanding any other provision of law—

"(i) a decision of a State appraiser certifying and licensing agency under this section shall be subject to review by a court of competent jurisdiction of the State; and

"(ii) a decision of a Federal financial institutions regulatory agency under this section shall be subject to review by the United States Court of Appeals for the District of Columbia in accordance with chapter 7 of section 5, United States Code.

"(s) DEFINITIONS.—For purposes of this section—

"(1) STATE APPRAISER CERTIFYING AND LICENSING AGENCY.— The term 'State appraiser certifying and licensing agency' means a State agency established in compliance with this section;

"(2) APPRAISAL SUBCOMMITTEE.—The term 'Appraisal Subcommittee' means the Appraisal Subcommittee of the Federal Financial Examination Council;

"(3) COUNCIL.—The term 'council' means the Federal Financial Institutions Examinations Council;

"(4) FEDERALLY RELATED TRANSACTION.—The term 'federally related transaction' means a real estate-related financial transaction requiring the services of an appraiser which a Federal financial institutions regulatory agency, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Resolution Trust Corporation engages in, contracts for or regulates;

"(5) REAL ESTATE RELATED FINANCIAL TRANSACTION.—The term 'real estate-related financial transaction' means any transaction involving—

"(A) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

"(B) the refinancing of real property or interests in real property; or

"(C) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities;

"(6) CHAIRMAN.—The term 'Chairman' means the Chairman of the Appraisal Subcommittee selected by the council.

"(7) FOUNDATION.—The terms 'Appraisal Foundation' and 'Foundation' mean The Appraisal Foundation established on November 20, 1987, as a not for profit corporation under the laws of Illinois.

"(t) MISCELLANEOUS PROVISIONS.—

"(1) TEMPORARY PRACTICE.—A State appraiser certifying or licensing agency shall recognize on a temporary basis the certification or license of an appraiser issued by another State if (A) the property to be appraised is part of a federally related transaction, (B) the appraiser's business is of a temporary nature; and (C) the appraiser registers with the appraiser certifying or licensing agency in the State of temporary practice;

"(2) AUTHORITY TO EXTEND PROVISIONS OF THIS SECTION TO OTHER FEDERAL ENTITIES.—The Office of Management and Budget is authorized, through the issuance of appropriate directives or orders, to require Federal departments and agencies, other than the Federal financial institutions regulatory agencies, to adhere to the provisions of this section requiring the use by those departments and agencies of appropriate appraisal standards, appraiser certification and licensing requirements, and State certified, and licensing appraisers for all federally related transactions of those other departments and agencies, as defined in this section.

"(3) PROHIBITION AGAINST DISCRIMINATION.—In securing the services of a real estate appraiser, users of appraisal services under this section shall not discriminate against a State certified or licensed appraiser on the basis of a designation from any particular professional real estate appraiser organization.".

(b) CONFORMING AMENDMENT.—Section 1003(1) of such Act (12 U.S.C. 3302(1)) is amended by striking "the Federal Home Loan Bank Board" and inserting "the Chairman of the Office of Savings Associations".

SEC. 1412. REPEAL OF SPECIAL TAX RULES.

(a) The Senate finds that special tax provisions which (1) determine the taxable status of payments made to financially troubled institutions by the FSLIC and the FDIC; (2) affect the tax-free reorganization status of troubled financial institutions, and (3) relax loss carryover rules of these institutions are inherently inefficient subsidies and do not permit for a full accounting of the costs of financing resolution of the financial institution crisis; and therefore

(b) It is the Sense of the Senate: That the House of Representatives should adopt and send to the Senate for consideration as part of the Financial Institutions Reform Act legislation to repeal special tax rules for financial institutions, including section 904(c) of the Tax Reform Act of 1986; the last sentence of section 382(l)(5)(F) of the Internal Revenue Code of 1986; and subparagraph (B) of section 904(c)(2) of the Tax Reform Act of 1986 (as amended by section 4012(c)(2) of the Technical and Miscellaneous Revenue Act of 1988) and that repeal of such rules shall apply to transfers on or after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act.

SEC. 1413. STATUS OF CERTAIN THRIFT INSTITUTION.

Section 306(h)(2) of the Federal Savings and Loan Recapitalization Act (12 U.S.C. 1730 note) is amended by inserting before the period at the end thereof the following: ", or an insured institution the board of directors of which determined prior to April 1, 1987, to terminate its status as an insured institution, as evidenced in sworn minutes of the board of directors meeting held prior to such date, which had insured deposits of less than $11,000,000 on such date, and the deposit insurance of which had been in effect for less than one year as of such date".

SEC. 1414. PASSIVE INVESTMENTS BY COMPANIES CONTROLLING GRANDFATHERED NONBANK BANKS.

(a) IN GENERAL.—Section 4(f)(2)(A)(ii) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(2)(A)(ii)) is amended to read as follows:

"(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or a savings association other than—

"(I) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

"(II) shares held by an independent party as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that company and the beneficiaries of those employees;

"(III) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

"(IV) shares held in an account solely for trading purposes or shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

"(V) loans or other accounts receivable acquired in the normal course of business;

"(VI) shares or assets acquired in securing or collecting a debt previously contracted in good faith, for two years after the date of acquisition or for such additional time (not exceeding 3 years) as the Board may permit if, in the Board's judgment, such an extension would not be detrimental to the public interest;

"(VII) shares or assets of a savings association described in paragraph (10) of this subsection; and

"(VIII) shares held by insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940, so long as all shares held under this subclause do not in the aggregate exceed 1 percent of any class of such shares; or".

(b) TECHNICAL AMENDMENT.—Section 4(f)(10) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(10)) is amended by striking "408(m) of the National Housing Act" and inserting in lieu thereof "section 13(k)(1)(A)(i) of the Federal Deposit Insurance Act".

SEC. 1415. SEPARABILITY OF PROVISIONS.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

TITLE XV—GENERAL PROVISIONS

SEC. 1501. DISTRICT OF COLUMBIA CORRECTIONAL FACILITY.

(a)(1) Since the Congress of the United States appropriated $50,000,000 between fiscal year 1986 and fiscal year 1989 to construct a correctional treatment facility in the District of Columbia.

(2) Since the construction of an eight hundred-bed correctional treatment facility for the District of Columbia has been delayed because of pending litigation preventing the destruction of a building on the grounds of District of Columbia General Hospital which currently occupies the site of the proposed correctional treatment facility, pending a determination of whether the building is eligible for the National Register.

(3) Since the Congress in September 1987, suspended all construction activities pending the outcome of an archaeological survey and alternative site review. And that the Congress, in May 1988, informed the District of Columbia that it could proceed with this project.

(4) Since the problem of crime generally and drug-related crime specifically has accelerated in Washington, District of Columbia, so that Washington has been referred to as the "murder capital of the United States" with one hundred and fifty homicides having been committed in the District of Columbia since January 1, 1989.

(5) Since a major Federal effort has been initiated on the drug-related crime problem in Washington, District of Columbia, as articulated on April 10, 1989, by Attorney General Richard Thornburgh, Housing and Urban Development Secretary Jack Kemp and Director of National Drug Control Policy William Bennett.

(6) Since the Mayor of Washington, District of Columbia, Marion Barry, Junior, in prepared testimony before the District of Columbia Subcommittee of the Appropriations Committee on April 17, 1989, at page 6 stated: "Finally, in the area of emergency assistance we request the help of the Committee to lead an expedited effort to clearly (perhaps legislatively) state the sense of the Congress that the long delayed eight hundred bed prison construction project in Southeast Washington is a local initiative being undertaken with a special Federal appropriations. Currently, construction is delayed because of a court interpretation that the project is a Federal initiative and, therefore, subject to review under Federal historical preservation laws. Clarification by the Congress should be helpful to the Court in deciding that the project is local and need not be delayed further.".

(7) Since at a hearing on April 17, 1989, Mayor Barry reiterated his request for a Sense of the Congress resolution as an aid to assist the District of Columbia in the construction of the eight hundred-bed correctional treatment facility.

(8) Since the issue is in litigation in the case of Flossie E. Lee, et al. v. Richard Thornburgh, et al. (89–0421), United States District Court for the District of Columbia, with a hearing scheduled for May 18, 1989.

(9) Since the Congress expresses no opinion on any underlying legal issue which is the sole province of the court, but does express its sense of urgency that the eight hundred-bed correctional treatment facility be constructed at the earliest possible time consistent with other provisions of law.

(b)(1) It is the Sense of the Congress that the eight hundred-bed local correctional treatment facility be completed at the earliest possible date to assist against crime generally and drug-related crime specifically.

(2) Mayor Barry and all other officials of the District of Columbia be urged to move ahead as expeditiously as possible with all aspects of the local program directed against crime generally and drug-related crime specifically including but not limited to the construction of local prison and jail space including the eight hundred-bed prison.

Passed the Senate April 19 (legislative day, January 3), 1989.

Attest:

Secretary.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS

This section designates the bill as the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989," and provides a table of contents.

TITLE I—PURPOSES

SECTION 101. PURPOSES

This section sets forth some of the primary purposes of the bill, namely:

(1) to promote, through regulatory reform, a safe and stable system of affordable housing finance;

(2) to improve the supervision of federally insured depository insitutions by strengthening the enforcement powers of Federal regulators;

(3) to curtail needless risks to the Federal deposit insurance funds by strengthening capital, accounting, and other regulatory standards;

(4) to promote the independence of the Federal Deposit Insurance Corporation through an independent board of directors, adequate funding. and appropriate powers;

(5) to put the Federal deposit insurance funds on a sound financial footing for the future;

(6) to establish an Office of Savings Associations in the Department of the Treasury, under the general oversight of the Secretary of the Treasury;

(7) to create a new corporation, to be known as the Resolution Trust Corporation, to deal with failed thrift institutions;

(8) to provide funds from public and private sources to deal expeditiously with failed financial institutions; and

(9) to strengthen the penalties for crimes and other misconduct involving federally insured depository institutions.

TITLE II—FEDERAL DEPOSIT INSURANCE CORPORATION

SECTION 201. FINANCIAL INSTITUTIONS

This section generally amends the Federal Deposit Insurance Act ("FDI Act") by replacing "insured bank" with "insured financial institution." "Financial institution" encompasses both banks and savings associations. Savings associations (defined in section 204) include Federal savings associations, Federal savings banks, State savings and loan associations, and certain similar institutions.

SECTION 202. DUTIES OF THE FDIC

Under current law, the Federal Deposit Insurance Corporation ("FDIC") insures deposits in qualified banks. Under this section, the FDIC would also insure deposits in qualified savings associations.

SECTION 203. FDIC BOARD MEMBERS

The FDIC is currently administered by a three-member board of directors ("FDIC Board"), consisting of the Comptroller of the Currency and two appointed members. The appointed members are appointed by the President for six-year terms, subject to confirmation by the Senate. No more than two members may be of the same political party. The Chairman is selected by the Board itself from among the appointed members. If the chairmanship becomes vacant, the Comptroller acts as Chairman until the Board selects a new Chairman.

A. Structure of the Board

This section expands the FDIC Board from three members to five. The Comptroller of the Currency and the Chairman of the Office of Savings Associations ("COSA") will automatically be members. The remaining three members will be appointed by the President for six-year terms, subject to confirmation by the Senate. Of the three appointed members, one will be appointed (subject to confirmation by the Senate) as the Chairman of the FDIC. No more than two of the three appointed members may be of the same political party.

If the Chairman of the FDIC leaves office or becomes disabled, the Board may (pending the appointment of a successor) select an Acting Chairman from among the appointed members.

B. Transition Provision

The current members of the FDIC Board may continue to serve until their terms expire. The current Chairman of the FDIC Board may continue to serve until his term as a member expires.

SECTION 204. DEFINITIONS

A. Receiver

A "receiver" is currently defined as a person appointed to wind up the affairs of a bank. This section broadens the terms to include a person appointed to wind up the affairs of a savings association, or to conserve the assets of a bank or savings association.

B. Deposit

The definition of a "deposit" is amended to include deposits in a savings association.

Accounts in a savings association heretofore insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") will automatically be insured by the FDIC up to the limit of FSLIC coverage, as determined by FSLIC regulations and interpretations in effect when the bill becomes law.

Although the FDIC and FSLIC have parallel statutes governing what kinds of deposits are insured and to what extent, the two agencies have developed slightly different standards on the subject (i.e., different regulations, principles, and interpretations regarding the scope of deposit insurance coverage). Under this section, accounts previously insured by FSLIC will for a limited time continue to be governed by FSLIC's standards, but will become subject to the FDIC's standards after the later of: (1) six months after the bill becomes law; (2) if the deposit has one or more maturity dates, after the first maturity date to occur after that six-month period; or (3) if prior notice to make a withdrawal is required, after the required notice period expires.

The FDIC should, to the fullest extent possible (consistent with safety and soundness) notify depositors that the transfer of deposit insurance from FSLIC to the FDIC may affect the extent of their coverage, so that no depositor unwittingly loses coverage because of this section.

C. Appropriate Federal Banking Agency

The FDI Act refers to the primary Federal regulator for a given type of institution (e.g., the Comptroller of the Currency for national banks) as the "appropriate Federal banking agency." This section specifies that the Chairman of the Office of Savings Associations, rather than the Federal Home Loan Bank Board ("Bank Board"), is the appropriate Federal banking agency for savings associations and savings and loan holding companies.

D. Savings Association

A "savings association" is defined as: (1) an institution whose accounts were insured by FSLIC when the bill became law (and that has not subsequently become a bank); (2) a Federal savings and loan association or Federal savings bank; (3) a State savings and loan association, building and loan association, or homestead association; and (4) any other corporation the FDIC determines to be operating in substantially the same manner as a savings and loan association.

E. Bank

The FDI Act's current definition of a "bank" is amended to specifically include cooperative banks that are FDIC-insured when the bill becomes law. The revised definition also specifies that a "bank" includes a former savings association that has become a bank, even if the institution is a member of the Savings Association Insurance Fund.

F. Default

Definitions of "default" and "in danger of default" are added to the FDI Act.

A financial institution is in "default" if a court of competent jurisdication, the appropriate Federal banking agency, or other public authority has made an offical determination under which a conservator or receiver or other legal custodian has been or will be appointed.

An institution is "in danger of default" if the appropriate Federal banking agency or the State chartering authority finds that: (1) the institution is not likely to be able to meet its depositors' demands or pay its obligations in the normal course of business, and there is no reasonable prospect that the institution will be able to meet those demands or pay those obligations without Federal assistance; or (2) the institution has incurred or is likely to incur losses that will deplete substantially all of its capital, and there is no reasonable prospect for the institution's capital to be replenished without Federal assistance.

G. Institution-Related Party

The bill introduces a new term, "institution-related party," to replace current references to directors, officers, employees, and other persons participating in the affairs of an insured bank or savings association, as used throughout the enforcement provisions of the Federal Deposit Insurance Act. The new term is more concise, and it is defined so as to expand the Federal banking agencies' enforcement authority to include all persons that may have an influence over the operations of an insured financial institution.

An "institution-related party" is defined to include any director, officer, employee, agent, controlling shareholder (other than a holding company), or other person participating in the conduct of the affairs of an insured financial institution or a subsidiary of an insured financial institution, and any person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency.

An institution-related party also includes an "independent contractor" such as an attorney, accountant, or appraiser, who knowingly or recklessly participates in a wrongful action that had or is likely to have an adverse effect on an insured financial institution. The additional requirement of knowing or reckless participation in a wrongful act applies only to an independent contractor who does not otherwise participate in the financial institution's affairs. Thus, for example, an attorney who is a director of a bank would automatically be an "institution-related party," even if he or she did not knowingly or recklessly participate in a wrongful act.

H. Subsidiary

A "subsidiary" is defined as any company directly or indirectly owned or controlled by another company. It includes a service corporation owned in whole or in part by an insured financial institution, and any direct or indirect subsidiary of the service corporation. Thus, if 20 savings associations each owned a 5 percent interest in a single service corporation, that corporation would be a subsidiary of each of the 20 parent savings associations. In addition, any subsidiary of such a service corporation would also be a subsidiary of each of the 20 parent savings associations.

SECTION 205. INSURED SAVINGS ASSOCIATIONS

This section provides that every savings association whose accounts are insured by FSLIC when the bill becomes law will automatically be insured by the FDIC.

This section also changes current procedures for granting FDIC insurance to national banks and State banks that are members of the Federal Reserve System ("State member banks"). Under the FDI Act, a national bank automatically receives FDIC insurance when the Comptroller of the Currency permits it to commence business as a national bank, and a State bank automatically receives FDIC insurance when the Federal Reserve Board admits it to membership in the Federal Reserve System. In each such case, the Comptroller or the Board issues a certificate to the FDIC stating that it has considered the statutory criteria that the FDIC must consider when granting or denying insurance coverage, namely: (1) the bank's financial history and condition; (2) the adequacy of the bank's capital structure; (3) the bank's future earnings prospects; (4) the general character of the bank's management; (5) the convenience and needs of the community to be served; and (6) whether the bank's corporate powers are consistent with the purposes of the FDI Act. (These criteria, which are part of current law, are retained and strengthened by section 207 of the bill.)

Under this section, a national bank or State member bank cannot commence business as such until the FDIC has received notice of the application and had a reasonable time in which to comment. The Comptroller or the Federal Reserve Board must consider the FDIC's comments when making its final determination on whether the bank satisfies the statutory criteria for insurance.

SECTION 206. APPLICATIONS FOR DEPOSIT INSURANCE

A. State Savings Associations

A State nonmember bank must apply directly to the FDIC for deposit insurance. The FDIC considers the six statutory criteria noted above, and also examines the institution to ensure that it has sufficient assets, in excess of minimum required capital, to meet all of its liabilities.

This section extends the same requirements to State savings associations: such an institution must apply directly to the FDIC for deposit insurance, and the FDIC will then evaluate the application under the same criteria as apply to a State nonmember bank.

B. Federal Savings Associations

A new Federal savings association, having received its charter from the Chairman of the Office of Savings Associations, must apply to the FDIC and provide a certificate from COSA stating that COSA has considered the statutory criteria for granting deposit insurance. The FDIC is to review the application and the certificate, and may also conduct its own examination of the institution. The savings association will then receive FDIC insurance unless the FDIC Board determines, by a vote of at least three-fourths of its sitting members, that insurance should be denied.

In determining whether to grant or deny insurance, the FDIC Board is to give due deference to COSA's determination, but it is to independently consider: (1) the institution's financial history and condition; (2) the adequacy of the institution's capital structure; (3) the institution's future earnings prospects; (4) the general character and fitness of the institution's management; and (5) the risk that the institution presents to the pertinent insurance fund. The FDIC Board is not to consider the convenience and needs of the community to be served or whether the institution's corporate powers are consistent with the purposes of the FDI Act. (The institution's corporate powers would, of course, be set by Federal law.) If the FDIC Board votes to deny insurance, it must promptly notify COSA, giving specific reasons for the denial.

C. Interim Associations; Conversions and Mergers

Three types of new Federal savings associations are exempt from the above procedures: (1) interim institutions that will not open for business; (2) institutions resulting from the conversion of an insured State institution; and (3) institutions resulting from the merger of existing insured institutions. Any such institution will automatically be insured upon receiving its charter from COSA.

D. New Criteria for Granting Insurance

The criteria for granting deposit insurance to a branch of a foreign bank are expanded to include the risk presented to the pertinent deposit insurance fund as well as the "fitness" of management. As noted above, current law already requires the FDIC to consider the "general character" of management. Section 207 makes an identical change in the criteria to be considered before granting insurance to banks and savings associations.

E. Entrance Fee

FSLIC may currently charge State thrift institutions an entrance fee based on the administrative costs to FSLIC of examining those institutions. This section imposes an entrance fee on any uninsured financial institution or uninsured branch of a foreign bank that seeks insurance from either of the FDIC's deposit insurance funds: the Bank Insurance Fund ("BIF") or the Savings Association Insurance Fund ("SAIF"). The fee is to be credited to the appropriate insurance fund. The FDIC is to set the amount of the fee by regulation, with due consideration for the need to establish and maintain adequate reserve ratios in each fund as required by section 208 of the bill. A savings institution previously insured by FSLIC automatically becomes SAIF-insured under the bill and need not pay an entrance fee.

F. Conversions from One Fund to the Other

A financial institution engages in a "conversion transaction" if it moves from the Savings Association Insurance Fund to the Bank Insurance Fund, or vice versa. Such a transaction also includes a merger or consolidation of a SAIF member with a BIF member, or a transfer of deposit liabilities from a member of one insurance fund to a member of the other fund.

The bill prohibits any insured financial institution from participating in a conversion transaction without the FDIC's prior consent. For five years after the bill becomes law, the FDIC may not consent to any conversion, with the following exceptions:

1. Insubstantial portion of liabilities

The FDIC may at any time permit a conversion transaction that affects only an "insubstantial" portion of an institution's insured liabilities. A transaction meets that test if the insured liabilities transferred during the five-year period do not exceed 20 percent of the total insured liabilities held by the institution when the bill becomes law.

2. Acquisition of a troubled institution

The FDIC may at any time permit a conversion transaction in connection with the acquisition of a financial institution that is in default or in danger of default. However, to approve a conversion under this exception, the FDIC must determine that the estimated financial benefits to the insurance fund the institution is leaving equal or exceed the estimated loss of assessment income to that insurance fund during the five years following the conversion. If the conversion transaction results in a loss of assessment income to SAIF, the Resolution Trust Corporation must concur in the FDIC's determination regarding the relative costs and benefits involved.

3. Transactions to meet capital requirements

The FDIC may at any time permit a conversion transaction that assists the institution involved in meeting a capital standard that the institution and its Federal supervisory agency agreed to before August 10, 1987, if the institution has made a binding, written commitment to use any gain from the conversion to increase its capital.

4. Institution that never accepted deposits

The FDIC may at any time permit a conversion transaction involving a particular State savings association that has never accepted deposits and was not FSLIC-insured when the bill became law.

G. Conversion Fees

Every institution participating in a conversion transaction in which the resulting or acquiring institution is a BIF member must pay an exit fee to SAIF (or to the Financing Corporation, if the Financing Corporation has exhausted all other means of paying interest on its obligations). The fee is to be set by the FDIC with the approval of the Secretary of the Treasury, and collected from the converting institution or other institution involved, as specified by the Secretary.

The FDIC may impose an entrance fee on institutions converting from SAIF to BIF or vice versa. In either case, the entrance fee must be the amount necessary to prevent dilution of the fund into which the institution is transferring, and must be paid to that fund.

H. Liability of Commonly Controlled Financial Institutions

1. Liability to the FDIC

Whenever the FDIC incurs a loss in connection either with a default or with providing assistance to a financial institution in danger of default, any commonly controlled insured financial institution is liable to the FDIC—and may be required to reimburse the FDIC—for the loss. No such liability exists unless the FDIC notifies each such institution of the liability within two years after incurring the loss.

Financial institutions are "commonly controlled" if they are subsidiaries of the same financial institution holding company, or if one financial institution controls the other financial institution.

2. Procedure; amount of compensation

When an insured financial institution is in default, or needs financial assistance because it is in danger of default, the FDIC is to make a good-faith estimate of its anticipated loss. The FDIC must then notify all other commonly controlled financial institutions of the amount of the estimated loss, and each institution's share. After consulting with the appropriate Federal banking agency for each such institution, the FDIC is to specify the procedures and schedule by which those institutions are to reimburse the FDIC for the anticipated loss. The FDIC may compel immediate payment of those amounts. If the amount paid is more than the FDIC's actual loss, the FDIC is to refund the excess to each institution from which payments were received. If the amount paid is less than the actual loss, the FDIC may require each commonly controlled institution to make an additional payment.

3. Priority

A commonly controlled institution's liability to the FDIC takes priority over any other obligation that is subordinated to depositors and general creditors, any obligation owed to shareholders because they are shareholders, and any unsecured obligation or liability owed to any other commonly controlled company or financial institution. The FDIC's claim is subordinate to deposit liabilities (other than deposits of commonly controlled financial institutions), secured obligations, and other general liabilities. The FDIC's claim is equal in preference to all other obligations and liabilities of the financial institution.

4. Review

The FDIC is to establish an administrative procedure for reviewing its own determinations regarding the amount of loss, the liability of commonly controlled institutions, and the scheduling of payments. Commonly controlled institutions subject to liability are entitled to a full evidentiary hearing on the record pursuant to the Administrative Procedure Act.

The FDIC's determinations regarding loss, liability, and the procedures or scheduling of payments may be reviewed in the court of appeals. The scope of review shall be in accordance with section 706 of title 5. Thus the reviewing court shall set aside the FDIC's findings or conclusions if they are not supported by substantial evidence.

5. Limitations on private rights

This section precludes any court from giving effect to any right conferred on any person, if giving effect to the right would impair a financial institution's ability to reimburse the FDIC under this section.

6. Exceptions

In setting forth the liability of commonly controlled financial institutions, this section makes four limited exceptions.

a. Limited partnerships

The first exception relates to certain limited partnerships that, on or before April 10, 1989, filed registration statements with the SEC indicating that the partnerships intended to acquire one or more insured financial institutions. This section does not apply to such a limited partnership or its affiliates, other than to a financial institution that is a majority-owned subsidiary of the partnership.

b. SAIF and BIF members

For the first five years after the bill becomes law, no BIF member will be liable for losses arising out of the default of or assistance provided to a SAIF member, and vice versa.

c. Certain institutions that made acquisitions in economically distressed States

The third exception relates to certain acquisitions by out-of-State acquirers in economically distressed States, consummated on May 1, 1987, or January 29, 1989, in which the institutions acquired in each case had aggregate total assets exceeding $4 billion. Unless extended by the FDIC, the exception expires five years after the acquisition.

d. Common control resulting from debts previously contracted

Under the fourth exception, institutions are not commonly controlled if they are affiliated solely because voting shares are acquired in securing or collecting a debt previously contracted in good faith. The exception expires five years after the date of acquisition. During the five-year period, all transactions between the acquired institution and affiliated financial institutions must fully comply with sections 23A and 23B of the Federal Reserve Act, without using the exemption in section 23A(d)(1) for transactions between affiliated institutions.

SECTION 207. ELIGIBILITY FOR DEPOSIT INSURANCE

Under current law, the FDIC and the other Federal banking agencies are required to consider six criteria when determining whether an institution qualifies for FDIC insurance: (1) the financial history and condition of the institution; (2) the adequacy of its capital structure; (3) its future earnings prospects; (4) the general character of its management; (5) the convenience and needs of the community to be served; and (6) whether its corporate powers are consistent with the purposes of the FDI Act.

This section makes the criteria more stringent by requiring the agencies to consider (1) the "fitness" as well as the general character of management, and (2) the "risk presented to the Bank Insurance Fund or the Savings Association Insurance Fund, as appropriate."

SECTION 208. ASSESSMENTS

Section 208 amends section 7 of the Federal Deposit Insurance Act.

A. Reports

This section strengthens the FDIC's authority to obtain reports from insured financial institutions. It gives the FDIC access to all reports made by such institutions to other Federal banking agencies; permits the FDIC to provide the other Federal banking agencies with reports it receives; and authorizes the FDIC, with the consent of the other Federal banking agencies, to require insured finanical institutions to file additional reports for insurance purposes. This section retains the current requirement that insured banks file quarterly reports of their financial condition with the apporpriate Federal banking agency, and extends that requirement to insured savings associations.

B. Assessment Rates

This section establishes procedures governing the assessment of deposit insurance premiums, and sets the annual insurance assessment rates and target reserve ratios for BIF and SAIF members. Assessment rates are to be independently established for BIF and SAIF members.

The section specifies a target reserve ratio for each fund. The reserve ratio is the net worth of the fund divided by the aggregate amount of insured deposits held by the fund's members. The minimum reserve ratio for both BIF and SAIF is 1.25 percent of insured accounts, but the FDIC Board may apply a higher ratio to members of either fund if it determines that the higher ratio is justified by a significant risk of substantial future losses to that fund. The higher ratio cannot exceed 1.65 percent of insured deposits, and must be set annually, by a vote of the FDIC Board.

Any assets of either fund exceeding 1.25 percent of insured deposits constitute a "supplemental reserve," whose earnings will accrue to an earnings participation account for quarterly distribution to the fund's members. The supplemental reserve must itself be distributed to the fund's members if it is no longer needed to satisfy the reserve ratio.

This section establishes the amounts members must pay for deposit insurance. Those amounts are expressed as a percentage of the member's assessment base as determined under current law. BIF members must pay the current insurance assessment rate (1/

12 of 1 percent) until the end of 1989. For 1990, the rate will be 12/100 of 1 percent. After 1990, the rate will be 15/100 of 1 percent.

Before 1995, the FDIC Board may raise the annual assessment rate for BIF members only if BIF's reserve ratio remains at or below the previous year's ratio. During and after 1995, the Board may raise the annual assessment rate for BIF members if it expects BIF's reserve ratio to be below the designated reserve ratio for that year. The increase in any year cannot exceed 5/100 of one percentage point, and the maximum annual assessment rate that may be set under this procedure is 30/100 of 1 percent. Each BIF member must contribute at least $1,000 per year.

Similarly, SAIF members must pay their current rate (20.8/100 of 1 percent) until December 31, 1990. From January 1, 1991, through December 31, 1993, they will pay 23/100 of one percent. From January 1, 1994, through December 31, 1997, they will pay 18/100 of 1 percent. After 1997, they will pay 15/100 of one percent.

After 1994, and until SAIF's reserve ratio reaches 1.20 percent, the FDIC may increase the SAIF assessment rate if: (1) SAIF has had a net loss in any of the three preceding years; or (2) the FDIC Board determines that extraordinary circumstances pose a reasonable risk of serious future losses to SAIF.

Once SAIF's reserve ratio reaches 1.20 percent, the FDIC may increase the SAIF assessment rate if the FDIC Board expects the reserve ratio to be below the designated reserve ratio for the year.

The SAIF rate cannot exceed 30/100 of 1 percent nor can the FDIC raise the rate by more than 5/100 of one percentage point per year. Each SAIF member must contribute at least $1,000 per year.

This section makes it clear that premiums paid to the Financing Corporation and the Resolution Funding Corporation will count (dollar for dollar) against the limits on SAIF assessments. This ensures that institutions are not double- or triple-assessed.

The FDIC's assessment producers apply to both BIF and SAIF members. The semiannual assessment due from each member is equal to one-half the annual assessment rate times the member's average assessment base for the immediately preceding semiannual period.

C. Credits

When the FDIC Board expects a fund's reserve ratio to exceed the designated reserve ratio, the FDIC will rebate to the fund's members the lesser of (1) the amount necessary to reduce the fund's reserve ratio to the designated reserve ratio, or (2) 100 percent of the fund's net assessment income in the succeeding year. For each Fund, net assessment income is defined as total assessments and investment income minus (a) net operating costs and expenses and (b) net additions to loss reserves and actual losses sustained. These credit payment procedures apply to each fund separately.

D. Change in Control

This section amends the Change in Bank Control Act by requiring the appropriate Federal banking agency to consider the effect of a proposed acquisition on the pertinent deposit insurance fund and by applying the Act to savings and loan holding companies and any other companies that control financial institutions.

SECTION 209. CORPORATE POWERS OF THE FDIC

This section makes technical and conforming amendments to section 9 of the FDI Act, which generally sets forth the basic corporate powers of the FDIC. This section provides that when the FDIC has been appointed receiver under State law for a State savings association, claims by or against the savings association which arose before the FDIC was appointed shall not be deemed to arise under Federal law. This preserves potential State court jurisdiction over such claims.

SECTION 210. ADMINISTRATION OF THE FSLIC

Section 210 authorizes the FDIC to examine any State savings association that applies for insurance, and to conduct "special examinations" of any insured savings association. The FDIC currently has similar authority to make special examinations of national and State member banks.

SECTION 211. INSURANCE FUNDS

A. Establishment and Funding of Separate Funds

This section amends section 11 of the FDI Act to provide for two separate deposit insurance funds, which are not to be commingled. The Bank Insurance Fund is a continuation of the FDIC's existing fund. All assets, debts, obligations, contracts, and other liabilities of the existing FDIC fund are to be transferred to BIF. All assessments paid by BIF members are to be paid into BIF, and BIF's assets are to be used in connection with BIF members.

The other fund is the Savings Association Insurance Fund. All assessments paid by SAIF members are paid into SAIF, except to the extent that those assessments are committed to the Financing Corporation, the Funding Corporation, or the FSLIC Resolution Fund. SAIF's assets are to be used in connection with SAIF members. In addition, beginning in fiscal year 1991, to the extent that assessments paid into SAIF may fall short of the following amounts, the Treasury is to make up the difference (subject to available appropriations):

[Dollars in billions]

Fiscal Year:	
1991	$2.0
1992	3.4
1993	4.6
1994	3.0
1995	4.0
1996	4.0
1997	4.0
1998	4.0
1999	3.0

The Treasury will also contribute (subject to available appropriations) any additional funds needed by SAIF to maintain a certain minimum net worth. The minimum net worth for each of the years 1991 through 1999 is as follows:

[Dollars in billions]

Fiscal Year:	
1991	$0.0
1992	1.0
1993	2.1
1994	3.2
1995	4.3
1996	5.4
1997	6.5
1998	7.6
1999	8.8

The Treasury will provide any funds needed for SAIF to maintain the requisite net worth until the earlier of 1999, or the first fiscal year in which SAIF's reserve ratio is at least 1.25 percent. The Treasury's potential obligation is, however, indirectly limited by a provision that SAIF's cumulative additions to obligations for fiscal years 1991 through 1999 may not exceed $24 billion.

FSLIC currently has authority to borrow from the Federal home loan banks. This section authorizes the FDIC to borrow from the FHL Banks (with the concurrence of the Federal Home Loan Bank Agency) such funds as the FDIC deems necessary for use by SAIF, so long as SAIF's total obligations do not exceed 85 percent of its assets (as provided in section 220 of the bill).

B. Managing the Insurance Funds and the Assets of Failed Institutions

Although BIF and SAIF must be kept separate, the FDIC may carry out its functions with respect to both insured banks and insured savings associations using common facilities, personnel, and other administrative resources, and may manage and liquidate assets of failed banks and savings associations on a combined, efficient basis. The FDIC must maintain adequate records of costs and expenses, and must properly allocate those costs and expenses between BIF and SAIF.

SECTION 212. FDIC RECEIVERSHIP POWERS

Section 212, together with sections 213 and 214, amend section 11 of the FDI Act to redefine FDIC's rights and powers as a receiver for insured financial institutions; to authorize the FDIC to act as a conservator for such institutions; and to integrate into a common code rights and powers that the FDIC and FSLIC have exercised separately over insured banks or insured savings associations.

A. General Rights and Powers

Paragraph (1) of new section 11(c) authorizes the FDIC to act as receiver or conservator for any insured financial institution for which a legal custodian is appointed, and gives the FDIC the powers and duties specified in the FDI Act. Paragraph (1) also authorizes the FDIC to act as receiver or conservator for insured savings associations for which FSLIC acted as a receiver or conservator before January 1, 1989. Other provisions of the bill require the Resolution Trust Corporation to act as receiver or conservator for savings associations placed in receivership or conservatorship since January 1, 1989.

Paragraph (2) sets forth the various powers that the FDIC can exercise as conservator or receiver. These include operating an insured financial institution as a going concern, liquidating the institution, merging the institution with another institution, or transferring the institution's assets or liabilities to another institution. Many of these powers derive from FSLIC's powers under section 406(b) of the National Housing Act.

B. Specific Rights and Powers

Paragraph (3) requires the FDIC to pay the financial institution's credit obligations in accordance with the FDI Act.

Paragraph (4) together with new section 11(1) (added by section 214 of the bill), establishes procedures for notifying creditors that they must present their claims by a given date, and authorizes the FDIC as receiver to pay claims proved to its satisfaction. Procedures for determining the validity of claims are discussed in connection with section 214.

Paragraph (5) authorizes the FDIC as receiver to pay the FDIC as insurer the amount properly due on claims of insured depositors to which the FDIC became subrogated through its insurance payments.

Paragraph (6) permits the FDIC at any time to pay dividends from the liquidation of the institution to claimants who have satisfactorily proved their claims.

Paragraph (7) enables the FDIC, as conservator or receiver, to obtain a stay for up to 45 days of any judicial proceeding to which the FDIC or the institution is or becomes a party.

Paragraph (8) codifies the FDIC's common-law right as a liquidating receiver to repudiate or disaffirm a contract or lease which the FDIC considers to be burdensome and whose repudiation will promote the orderly administration of the institution's affairs. FSLIC's receivership regulations currently include that right. 12 C.F.R. §§ 548.2(k), 549.3(a) (1988). This paragraph incorporates rights and principles established at common law or in bankruptcy. Subparagraphs (D) and (E) are closely modeled on parallel provisions of section 365 of the Bankruptcy Code. Subparagraph (C) is analogous to those provisions. Subparagraph (B) follows common-law principles in limiting to compensatory relief the damages that a party may claim on a repudiated contract.

Subparagraph (I) of paragraph (8) requires the FDIC to determine within a reasonable time whether or not it wishes to repudiate a contract or lease. Subparagraph (J) provides assurance of payment to a claimant that provides services to an institution after the FDIC is appointed as receiver.

Subparagraphs (G) and (H) of paragraph (8) limit the FDIC's right of repudiation to ensure that the right does not create risks either to those who have valid security interests in the institution's assets or to certain lenders of last resort that have extended credit to the institution.

Subparagraphs (F), (K), (L), (M), and (N) of paragraph (8) contain certain limitations or assurances that either have been recognized by FSLIC or the FDIC in prior administrative actions or are consistent with rights of claimants under bankruptcy law. These provisions, which were recommended by the FDIC, principally concern the contract liquidation rights of parties to extensions of credit, liquidity arrangements, or contracts facilitating risk management.

Paragraph (9) enables the FDIC, as receiver or conservator, to enforce contracts entered into by the financial institution, even if the contract purports to allow the other party to declare the contract in default solely because the FDIC has been appointed as custodian or because the institution is insolvent.

Paragraph (9) does not apply to director's and officer's liability insurance contracts or to financial institution bonds. The FSLIC and FDIC have frequently challenged clauses in such contracts or bonds that preclude the deposit insurer from bringing a claim under the contract or bond, contending that the clauses are unenforceable. Paragraph (9) remains neutral regarding such litigation and regarding the FDIC's ability under other provisions of State or Federal law, current or future, to pursue claims on such contracts or bonds. For example, if the law of a particular State declares limitations on the enforceability of director's or officer's liability contracts to be void as against public policy, the FDIC could pursue a claim on such a contract under that State's law.

Paragraph (10) requires that the FDIC maintain an accounting of its actions as receiver or conservator for an institution and annually provide a copy of the accounting, upon request, to the institution's shareholders, the Secretary of the Treasury, the Comptroller General, and the authority that appointed the FDIC as receiver or conservator.

Paragraph (11) requires the FDIC to distribute to an institution's shareholders or members any funds remaining after paying creditors and other claimants.

Under paragraph (12), the FDIC may, seven years after it is appointed receiver, destroy records of the institution that are no longer needed. However, the FDIC may not destroy records that may be needed for a criminal prosecution or a civil or administrative proceeding.

Paragraph (13) authorizes the FDIC as receiver or conservator to sell certain single family or multi-family loans or collateral for such loans to State housing finance authorities.

Paragraph (14) gives the FDIC at least three years following its appointment as receiver or conservator to bring a legal action as receiver or conservator. The period may be longer than three years to the extent that more time is provided under any applicable State or Federal statute of limitations. Section 214 of the bill may provide additional time under Federal statutes of limitations.

C. Custody of Federal or D.C. Institutions

Subsection (b) of this section requires that the FDIC be the receiver or liquidating conservator for an FDIC-insured Federal financial institution or an insured institution chartered under the District of Columbia Code. It also permits the FDIC to be appointed a nonliquidating conservator for such an institution. The FDIC, when acting as receiver or conservator for any Federal or D.C. financial institution, will have all powers set forth in the FDI Act as well as all powers granted under other applicable law. Unless the FDIC operates an institution in conservatorship as a going concern, the institution will be free from supervision by other agencies or departments.

D. Custody of State Institutions

Subsection (c) of this section amends section 11(e) of the FDI Act to authorize the FDIC to accept appointment as receiver or conservator under State law for any insured State financial institution. In that capacity, the FDIC will have all powers granted under State law as well as those under the FDI Act. As is the case with Federal institutions, if the FDIC operates a State institution as a going concern, that institution will be subject to supervision by the appropriate Federal banking agency.

Paragraph (2) provides that during the three years after the bill becomes law, whenever COSA appoints a liquidating receiver or a liquidating conservator for a State savings association, that receiver or conservator must be the Resolution Trust Corporation (created under section 501 of the bill). In any case arising thereafter, the FDIC is to be appointed the liquidating receiver or conservator. The paragraph permits a State supervisor to appoint the RTC or the FDIC as a nonliquidating conservator for a State savings association.

Paragraph (3) empowers the FDIC to appoint itself as sole conservator or receiver for a State savings association under certain circumstances. This authority resembles that of the Bank Board under section 406(c)(2) of the National Housing Act. Section 501 of the bill gives the Resolution Trust Corporation similar authority to appoint itself conservator or receiver during the three years after the bill becomes law.

Paragraph (4) grants the FDIC as conservator or receiver the same powers over a State financial institution as section 11(d) of the FDI Act grants the FDIC over a Federal financial institution.

E. Deposit Insurance Payments

Subsection (d) of this section requires that insurance payments to depositors of BIF members be made only from BIF, and that payments to depositors of SAIF members be made only from SAIF. Subsection (d) also authorizes the FDIC to determine deposit insurance claims administratively, subject to judicial review.

F. Right of Subrogation

Subsection (e) provides that when the FDIC pays insurance to a depositor or arranges for another institution to assume liability for the deposit, the FDIC is automatically subrogated to the depositor's claim against the failed institution (i.e., the FDIC acquires all the depositor's rights).

G. Deposit Insurance National Bank

Subsection (f) makes technical changes in section 11(h) of the FDI Act, which sets forth the FDIC's authority to organize a new national bank to assume a failed bank's insured deposit liabilities.

SECTION 213. BRIDGE BANKS

This section revises section 11(i) of the FDI Act, which sets forth the FDIC's authority to organize bridge banks. A bridge bank is a temporary bank organized by the FDIC to purchase assets or assume liabilities of a failing bank while the FDIC attempts to arrange for a more permanent solution, such as a purchase and assumption by a healthy institution. The more significant of these changes will now be described.

Under current law, a bridge bank can be organized only after an insured bank is closed. This section permits the FDIC to organize a bridge bank to deal with an insured bank in default or in danger of default. It also specifies that more than one bridge bank may be used, and that a bridge bank may take on assets or liabilities of more than one failed or failing institution.

Under current law, a bridge bank cannot assume just part of a closed bank's deposits; it must assume all or none. This section permits the bridge bank to distinguish between insured and uninsured deposits or among uninsured deposits.

This section authorizes the FDIC to treat a bridge bank as being in default, thus permitting the FDIC to avail itself of its conservatorship powers and other extraordinary remedies.

This section gives the FDIC greater flexibility and discretion in transferring assets and liabilities to a bridge bank, and specifies that assets and liabilities associated with a trust business may be transferred.

Under this section, a bridge bank is upon request entitled to a 45-day stay of judicial proceedings, and is also given protection against oral understandings that could erode its rights.

The FDIC may, but need not, provide a bridge bank with operating funds.

The Attorney General's antitrust review of any transaction involving the acquisition of the bridge bank may be waived if the transaction must be consummated immediately to prevent the probable failure of one of the parties.

The maximum life of a bridge bank is extended to five years from the current three.

SECTION 214. VALUATION OF CLAIMS AND REVIEW

This section adds nine new subsections to section 11 of the FDI Act, generally relating to the valuation, administrative determination, and judicial review of claims.

A. Valuation of Claims

New subsection (k) sets forth the rights of creditors (other than insured depositors) of an insured financial institution in default or in danger of default when the FDIC acts other than as a nonliquidating conservator (e.g., as receiver, as liquidating conservator, or through a bridge bank). The FDIC's liability is limited to the amount the claimant would have realized from a liquidation of the institution's assets and the distribution of the net proceeds as liquidating dividends, including any proceeds actually realized for the institution's value as a going concern. Subsection (k) also clarifies that the FDIC may use its own resources to make additional payments to any claimant or category of claimants, without having to make such additional payments to other claimants. The payments may be made (1) to claimants directly, or (2) to an open insured institution to induce that institution to accept liability for claims.

Such payments must be from BIF if the institution in default is a BIF member; or from SAIF if the institution in default is a SAIF member.

B. Rulemaking: Administration Determination of Claims

New subsection (l) authorizes the FDIC to adopt administrative procedures for determining claims against an institution in receivership, under which a contested claim will be decided by an independent administrative law judge and that judge's decision will be subject to judicial review. This approach is intended to deal satisfactory with the statutory and constitutional issues recently analyzed by the Supreme Court in *Coit Independence Joint Venture v. Federal Savings and Loan Insurance Corporation,* 109 S.Ct. 1361 (1989).

C. Limits on Judicial Intervention

Like current section 5(d)(6)(C) of the Home Owners' Loan Act, new subsection (m) limits judicial interference in the FDIC's conduct of a conservatorship or receivership.

D. Liability of Officers and Directors

New subsection (n) enables the FDIC to pursue claims against directors or officers of insured financial institutions for gross negligence (or negligent conduct that demonstrates a greater disregard of a duty of care than gross negligence) or for intentional tortious conduct. This right supersedes State law limitations that, if applicable, would bar or impede such claims. This subsection does not prevent the FDIC from pursuing claims under State law or under other applicable Federal law, if such law permits the officers or directors of a financial institution to be sued (1) for violating a lower standard of care, such as simple negligence, or (2) on an alternative theory such as breach of contract or breach of fiduciary duty.

E. Procedures Applicable to Certain Claims

New subsection (o) makes procedural changes affecting claims by the FDIC against insured financial institutions' directors, officers, employees, and certain other parties, if the FDIC acquired the claim pursuant to section 11 or 13 of the FDI Act. For example, subsection (o) bars certain acts, errors, or omissions of the FDIC or any other Federal banking agency from being raised as defenses to such claims, and makes it clear that the liability of a director or officer for breach of fiduciary duty cannot be discharged in bankruptcy. However, although an act, error, or omission of an appropriate Federal banking agency does not allow a defendant to avoid liability for his own conduct, it may be considered when appropriate in determining whether the defendant acted negligently or improperly. For example, if the FDIC brings a malpractice claim against a bank's attorney based on advice that proved erroneous, the attorney—in seeking to demonstrate that his advice was not negligent—would be free to show that the appropriate agency had agreed with his opinion.

F. Other Provisions

New subsection (p) gives the FDIC additional time in which to pursue certain claims against persons associated with insured financial institutions. Subsections (q), (r), and (s) expedite judicial proceedings involving claims brought by the FDIC against insured financial institutions' officers, directors, attorneys, accountants, or other agents.

SECTION 215. FSLIC RESOLUTION FUND

This section transfers all assets and liabilities of the FSLIC (other than certain guarantees which are transferred to the RTC) to a separate fund to be known as the "FSLIC Resolution Fund." Although this fund will be managed by the FDIC, it must not be commingled with any other FDIC fund. The assets transferred include FSLIC's outstanding claims as subrogee of insured depositors against savings associations in liquidation. The liabilities transferred include FSLIC's outstanding obligations under assistance agreements with acquirers of failing thrift institutions.

This section insulates the FDIC and the other funds it manages from liabilities of FSLIC that are transferred to the FSLIC Resolution Fund; specifies how money (including Treasury funds if appropriated by Congress) will be provided to satisfy the fund's liabilities; grants the FDIC broad authority to manage the fund; provides for the fund to be dissolved once its liabilities are satisfied and its assets are sold; requires the FDIC to report on the fund annually; and requires an annual audit of the fund by the Comptroller General (or at the Comptroller's discretion, by an independent certified public accountant).

SECTION 216. SECONDARY RESERVE

Section 216 preserves current law relating to FSLIC's secondary reserve. Thus, for example, an insured savings association may set off its share of the reserve against its liability for deposit insurance assessments.

SECTION 217. AMENDMENTS TO SECTION 12

This section makes technical and conforming changes in section 12 of the FDI Act.

SECTION 218. AMENDMENTS TO SECTION 13

This section amends section 13 of the FDI Act.

A. Investment of Funds

This section requires BIF, SAIF, and FSLIC Resolution Fund money not otherwise employed to be invested in obligations issued or guaranteed by the U.S. Government.

B. Stay of Judicial Proceedings

Under this section, the FDIC is entitled upon request to a 45-day stay of any action to which the FDIC becomes a party by exercising its authority under section 11 or 13 of the FDI Act.

C. Calculating the Cost of Assistance

Under current law, the FDIC may not provide assistance to an institution under section 13 unless it determines that such assistance will be less costly than liquidating the institution (unless the institution's continued operation is essential to the community). This section requires the FDIC, when comparing the cost of assistance with the cost of liquidation, to include in its calculations (1) any loss of Federal tax revenue resulting from the transaction to the extent such a loss can be ascertained, and (2) all of the FDIC's obligations with respect to any assistance, including contingent liabilities.

D. Net-Worth Certificates

This section repeals the FDIC's current authority to purchase net-worth certificates from an institution that is not federally insured, as well as a provision that treats net-worth certificates as net worth for statutory and regulatory purposes.

E. Emergency Acquisitions of Troubled Savings Associations

This section incorporates into section 13 of the FDI Act section 408(m) of the National Housing Act (repealed by the bill), which currently authorizes any company to acquire a failed or failing FSLIC-insured institution, "[n]otwithstanding any provisions of the laws or constitution of any State" or (with a few exceptions) "any provision of Federal law." This section greatly restricts the override of Federal law and makes a single exception to the override of State law. Only two provisions of Federal law may be overridden: (1) the service-corporation investment limitation in new section 5(c)(4)(B) of the Home Owners' Loan Act, but only to the extent necessary for the troubled savings association to be a subsidiary of the acquiring savings association; and (2) the Depository Institution Management Interlocks Act. Management interlocks may continue for up to 10 years.

Section 408(m)'s specific reference to a State constitution (rather than simply to "State law") is deleted as unnecessary, for under the supremacy clause of the U.S. Constitution, a Federal statute preempts any inconsistent State law, including State constitutions and statutes. Thus new section 13(k) can be used to override all State law (including State constitutions), with one exception: section 13(k) does not override State laws that restrict the activities of a savings association on behalf of any other entity. The intent of the prohibition is illustrated by State insurance laws. Under section 13(k), State laws prohibiting a savings association from being affiliated with an insurance company may be overridden, but not State laws that prohibit a savings association from marketing insurance products on behalf of an insurance company.

This section requires the FDIC, when acting under section 13(k), to determine that the acquisition does not present a substantial risk to the safety or soundness of the savings association to be acquired or to the acquiring institution. Thus the FDIC cannot simply consider short-term savings over the cost of liquidation when determining that the use of section 13 (k) will lessen its risk.

F. Branching Restrictions on Certain Savings Associations

This section relaxes the branching restrictions applicable under section 408(m)(5) to a thrift subsidiary of a bank or bank holding company. Such a subsidiary will be able to branch to the same extent as a savings association that has its home office in the same State as the subsidiary does and is not affiliated with a bank holding company.

G. Other Provisions

This section makes technical and conforming changes in section 13 of the FDI Act. For example, it extends the FDIC's assistance authority under section 13(c) of the Act to insured savings associations but specifies that payments with respect to SAIF members must be made from SAIF or with money provided by the Resolution Trust Corporation.

If an insured financial institution is in default, this section permits the institution's trusts to be transferred without judicial or other approval.

SECTION 219. BORROWING AUTHORITY

This section increases from $3 billion to $5 billion the FDIC's authority to borrow from the Treasury, and permits the FDIC to use that borrowing authority only if the Secretary of the Treasury approves and if funds have been appropriated. Funds borrowed become a liability of whichever of the separate insurance funds benefits from the borrowing.

SECTION 220. TAX LIABILITY; LIMITATION ON BORROWING

A. Liability for State and Local Taxes

Section 220 clarifies current law by specifying that the only kind of non-Federal tax to which the FDIC is subject, in its corporate capacity or as receiver, is a tax on real property. It further specifies that if an insured financial institution fails to pay a tax, the FDIC's only obligation as receiver or conservator for the institution will be to pay the pro-rata claim for the tax. The FDIC will not be subject to any special penalties or forfeitures that might otherwise apply, such as losing a security interest in the property.

B. Limitation on Borrowing

This section requires the FDIC, before issuing any note, bond, debenture, guarantee, or similar obligation, to estimate the cost of the obligation and include that cost in the FDIC's financial statements.

Neither BIF nor SAIF may incur any obligation whose estimated cost would reduce the fund's net worth below 15 percent of assets. In calculating the fund's net worth for purposes of that restriction, obligations owed to the Treasury (up to $5 billion) are disregarded, as are notes issued with the approval of the Secretary of the Treasury in lieu of borrowing from the Treasury.

C. Full Faith and Credit

This section pledges the full faith and credit of the United States for payment of principal and interest on notes, debentures, bonds, guarantees, and similar obligations of BIF and SAIF.

SECTION 221. REPORTS

This section requires the FDIC to report to Congress at the beginning of each year on its operations, activities, and finances during the previous 12 months. The report should analyze the purpose, effect, estimated cost, and actual cost of each resolution action funded by BIF, SAIF, or the FSLIC Resolution Fund. The FDIC must provide annual estimates of the future resource needs of the three funds, and should include its conclusions, findings, and recommendations for any future legislative or administrative action. The FDIC is also directed to submit to the Treasury and the OMB a quarterly forecast of its financial operations.

This section also requires the FDIC to conduct three special studies. The first study, due on or before January 1, 1991, will consider whether a system of risk-based deposit insurance premiums should be adopted. If the FDIC concludes that risk-based premiums are desirable and recommends that they be adopted, it is to provide a timetable and plan for implementation.

The second study, due six months after the bill becomes law, will examine the effect on safety and soundness in the banking system of passing through deposit insurance to individual investors in unit investment trusts or individual participants in pension plans. The study must also show how broadening deposit insurance coverage is likely to affect the capital markets.

The third study, also due six months after enactment, must be undertaken with the Justice Department and the Treasury, and must examine the structure and availability of directors' and officers' liability insurance and financial institution bonds. The report must consider various factors that may affect the availability of such insurance or bonds and the willingness of persons to serve as officers or directors of insured financial institutions. The report must also consider the effect of potential changes in those factors.

SECTION 222. REGULATIONS GOVERNING INSURED FINANCIAL INSTITUTIONS

A. Insurance Logo

This section requires insured savings associations to display a deposit insurance logo (1) stating that insured deposits are "backed by the full faith and credit of the United States Government"; (2) stating that each depositor is "federally insured to $100,000"; and (3) containing a symbol of a bald eagle (similar, for example, to that on the Great Seal of the United States).

Insured banks may display either that logo or the current FDIC logo.

B. COSA's Review of Mergers and Conversions

This section authorizes the Chairman of the Office of Savings Associations to review mergers and similar transactions under the Bank Merger Act if the acquiring or resulting institution is a savings association. This section also gives COSA similar authority over conversions from Federal to State charters.

C. Activities of Savings Associations and Their Subsidiaries

This section adds to section 18 of the FDI Act a new subsection (m), relating to the activities of insured savings associations, whether State or Federal.

1. Subsidiaries: regulatory review and enforcement; separate capitalization

If a savings association wishes to establish a company, acquire control of a company, or conduct any new activity through a company controlled by the savings association, subsection (m)(1) requires the savings association to:

(1) notify the FDIC and COSA of the proposed transaction or activity, and provide the information required by each agency's regulations;

(2) deduct from its regulatory capital its investment in and loans to the company if the company engages as principal in any activity not permissible for a national bank; and

(3) comply with all rules, regulations, and orders of COSA relating to the company's activities.

The capital-deduction requirement does not apply if the activity in question falls within one of the exceptions in new section 5(t)(3)(B) of the Home Owners' Loan Act (added by section 301 of the bill), such as the exemption for mortgage-banking activities.

Subsection (m)(2) grants the FDIC and COSA the same powers over a company controlled by a savings association as they respectively have over the parent savings association under subsection (m) or under section 8 of the FDI Act (relating to enforcement). Subsection (m)(2) also authorizes COSA to require divestiture of the company, to restrict the company's activities, or to take other corrective measures if COSA determines that a savings association's relationship to the company (1) poses a serious risk to the savings association's financial safety, soundness, or stability; or (2) is inconsistent with sound banking principles or the purposes of the FDI Act.

2. Activities incompatible with deposit insurance

Subsection (m)(3) authorizes the FDIC (in addition to its other authority under the subsection) to determine by regulation or order that any given activity of a SAIF-member State or Federal savings association poses a serious threat of loss to SAIF. Having made such a determination, the FDIC may prohibit any SAIF member from engaging in the activity directly. Activities permissible for Federal savings associations are not immune from scrutiny under this subsection.

3. No liability for activities conducted indirectly

Subsection (m)(3) also bars a SAIF member from assuming liability for any activity conducted indirectly, subject to a narrow exception.

4. Other authority not affected

The restrictions imposed and powers granted under subsection (m) are independent of those under other provisions of law. The FDIC's authority under the subsection does not limit the authority of COSA or a State charterer to impose more stringent restrictions, nor does the authority of those agencies limit that of the FDIC.

D. Prohibition Against Including Unidentifiable Intangible Assets in Calculating Capital

This section of the bill also adds to section 18 of the FDI Act a new subsection (n), which prohibits any insured bank or insured savings association from including any unidentifiable intangible asset acquired after April 12, 1989, in calculating its regulatory capital. The only exception is for goodwill resulting from an acquisition for which the appropriate application under the Savings and Loan Holding Company Act wasfiled on or before March 12, 1989.

SECTION 223. INVESTMENT ACTIVITIES OF STATE SAVINGS ASSOCIATIONS

This section adds to the FDI Act a new section 28, relating to the activities of State savings associations. Section 28 has four key provisions:

(1) a prohibition against equity investments that are not permissible for a Federal savings association;

(2) a general rule relating to other State-authorized activities that are not permissible for a Federal savings association;

(3) a modified version of that rule applicable when the only difference between State and Federal powers is that a State savings association may engage in a greater amount of a given activity than can a Federal savings association; and

(4) special rules for corporate debt securities that are not of investment grade (commonly known as "junk bonds").

An activity is not permissible for a Federal savings association for purposes of section 28 if, for example, it is impermissible for a Federal savings association under regulations prescribed by the Chairman of the Office of Savings Associations pursuant to section

5(c) of the Home Owners' Loan Act. Section 5(c) permits a Federal savings association to engage in various activities, but only "to such extent, and subject to such rules and regulations as the Chairman may prescribe from time to time."

A. General Rule

Subsection (a) prohibits a State savings association from engaging as principal, after January 1, 1990, in any type of activity that is not permissible for a Federal savings association unless both parts of the following two-part test are satisfied:

(1) the FDIC has determined that the activity in question would pose no significant risk of loss to the deposit insurance fund of which the savings association is a member; and

(2) the savings association has enough capital to meet the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act (section 301 of the bill).

The "fully phased-in capital standards" are those that will apply after any phase-in periods in either (1) the capital standards for savings associations, or (2) the capital standards for national banks (as the standards for savings associations are keyed to those for national banks). Under section 5(t)(4), the standards for savings associations must be fully implemented by June 1, 1991. The risk-based standards for national banks are scheduled to rise from 7.25 percent to 8.0 percent on December 31, 1992. 54 Fed. Reg. 4168, 4182 (1989). Section 5(t)(3), in requiring that certain subsidiaries be separately capitalized, provides a phase-in schedule that ends on June 30, 1994. Thus, for purposes of section 28, the fully phased-in capital standards are those that will apply to all thrift institutions once all such phase-in periods have expired.

Subsection (a) does not apply to activities that a savings association engages in only as its customer's agent, for such activities generally pose little risk of loss to the deposit insurance fund. Such activities could, however, be restricted under other provisions of law, such as new section 18(m)(3) of the Federal Deposit Insurance Act (added by section 222(4) of the bill), which authorizes the FDIC to prohibit any activity found to pose a serious threat of loss to SAIF.

B. Differences of Magnitude

Subsection (b) applies when an activity is permissible for a Federal savings association and a State savings association seeks to engage in that activity in an amount greater than that permissible for a Federal savings association. Under subsection (b), the State savings association may engage in that higher amount of the activity so long as both parts of the following two-part test are satisfied:

(1) the FDIC has *not* determined that engaging in that higher amount of the activity would pose any significant risk of loss to the deposit insurance fund; and

(2) the savings association has enough capital to meet the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

The second part of the test (relating to capital) is identical to that under subsection (a). The first part (relating to risk) differs from that under subsection (a) in that it does not require a *prior* determination by the FDIC on the issue of risk: it is sufficient that the FDIC has *not* determined that the higher amount of the activity permitted by the State poses a significant risk of loss to the deposit insurance fund.

Subsection (b) applies to activities conducted after January 1, 1990.

Subsection (b) does *not* apply to three types of investments that are dealt with under other subsections of section 28:

(1) shares of corporations that exceed the amount permissible for a Federal savings association, which are governed by subsection (a);

(2) nonresidential real-estate loans, which are also governed by subsection (a); and

(3) junk bonds, which are governed by subsection (d).

C. Prohibition Against Equity Investments

Effective as soon as the bill becomes law, subsection (c) prohibits a State savings association from acquiring or retaining any equity investment of a type or in an amount that is not permissible for a Federal savings association to acquire and retain directly. The prohibition applies to equity investments in real estate, investments in equity securities, and any other equity investment. In applying subsection (c), Federal regulators should look to the substance of the investment and not merely to the form. Any transaction that is in substance an equity investment is covered by subsection (c), even if the transaction is nominally a loan or other permissible transaction.

There is a limited exception for shares of service corporations. Such shares must, however, meet the two-part test of subsection (a) if either (1) the aggregate amount of the savings association's investment in service corporations exceeds that permissible for a Federal savings association; or (2) the service corporation engages in any activity that is not permissible for a service corporation of a Federal savings association. By the same token, subsection (c) does not restrict investments in service corporations that are permissible for a Federal savings association.

A State savings association must divest itself of any equity investment that is not permissible either (1) for a Federal savings association directly or (2) under the exception for shares of service corporations. Any such investment held when the bill becomes law must be divested as quickly as can be prudently done, as determined by the FDIC, and in any event not later than July 1, 1994. No such investment may be acquired after the bill becomes law.

Subsection (c) overrides subsections (a) and (b). Thus those subsections cannot be used to circumvent subsection (c).

D. Corporate Debt Securities That Are Not of Investment Grade

Subsection (d) contains a modified version of subsection (a) applicable to investments in junk bonds (i.e., corporate debt securities that are not rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization), as well as a special rule for junk bonds held through subsidiaries.

1. General rule

Under subsection (d)(1), a State savings association may not, directly or through a subsidiary, acquire or retain more in junk bonds than it could acquire directly if it were a Federal savings association with the same portfolio of commercial loans and other investments, unless:

(1) the FDIC has determined that no significant risk of loss to the deposit insurance fund would be posed if the savings association held the amount of junk bonds in question; and

(2) the savings association has enough capital to meet the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act, or would have enough capital to meet those standards if it were not required to exclude junk bonds from its capital pursuant to subsection (d)(4).

This two-part test differs from that of subsection (a) in that the savings association may satisfy the second part (relating to capital) by including in its capital certain investments by its subsidiaries in junk bonds, even though subsection (d)(4) generally requires that such investments be excluded from capital.

As subsection (d)(1) applies to investments made "directly or through a subsidiary," the junk-bond investments of the savings association are aggregated with those of its subsidiaries. The two-part test must be satisfied for the aggregate amount to exceed the amount that the savings association could acquire directly if it were a Federal savings association (taking all other relevant facts into account, such as the amount of the association's outstanding commercial loans).

2. Review procedures for existing investments

Subsection (d)(1) takes effect as soon as the bill becomes law, but junk bonds held on the date of enactment may be retained for 12 months. Under subsection (d)(2), a State savings association must file an application with the FDIC within 90 days after the bill becomes law if the savings association wishes to retain junk bonds in an amount greater than what it could acquire directly if it were a Federal savings association. The FDIC must act on such applications within 10 months after the bill becomes law.

In acting on the applications, the FDIC must apply the two-part test of subsection (d)(1), with one narrow exception: a savings association may satisfy the second part of that test (relating to capital) by convincing the FDIC that it *will* have enough capital to meet the fully phased-in capital standards within a reasonable time (not to exceed six months) after the FDIC's decision, even if the savings association does not meet those standards at the time of that decision. In applying the first part of the test (relating to risk), the FDIC should consider, among other relevant facts, the risks of and returns on the junk bonds, the savings association's capital ratios, and the savings association's management expertise and past performance on such investments.

In approving an application, the FDIC may impose any conditions it determines to be appropriate in light of the two-part test in subsection (d)(1). Thus if the FDIC determines that part of a savings association's junk-bond portfolio poses a significant risk of loss to the deposit insurance fund, the FDIC could require that part to be sold, separately capitalized, transferred to a separately capitalized subsidiary, or otherwise restricted.

Subsection (d)(3) provides a divestiture schedule that will apply to the extent that the FDIC does not permit a savings association to retain junk bonds in an amount greater than what the savings association could acquire directly if it were a Federal savings association.

3. Separate capital requirement for certain junk bonds held through subsidiaries

New section 5(t)(3) of the Home Owners' Loan Act generally requires a subsidiary of a thrift institution to be separately capitalized if it engages as principal in any activity not permissible for a national bank. But subsection (d)(3) of section 28 creates a special rule for junk bonds, applicable in place of section 5(t)(3).

Under section 5(t)(3), if a State savings association holds junk bonds through a subsidiary and the aggregate amount of such bonds held by the savings association and its subsidaries exceeds the amount that the savings association could acquire directly if it were a Federal savings association, then the excess amount is not counted as part of the savings association's capital (unless the FDIC, in approving an application under subsection (d)(1) or (d)(2), has authorized the savings association to count the excess amount as part of its capital).

E. Determination by Regulation or Order

Determinations under section 28 may be made by regulation or order.

F. Definition of "Activity"

As used in section 28, "activity" includes acquiring or retaining any investment. However, subsections (a) and (b) do not require a savings association to divest itself of assets acquired before the bill became law (although divestiture may be required by subsection (c) or (d), as discussed above).

G. Other Authority Not Affected

Section 28 does not limit any authority of the FDIC under other provisions of law, such as new section 18(m)(3) of the Federal Deposit Insurance Act. Likewise, section 28 does not restrict any authority of COSA or of a State to impose more stringent restrictions.

SECTION 224. LOAN-TO-VALUE RATIOS

This section sets minimum collateral standards for loans secured by real estate, so that such a loan will not exceed a specified percentage of the appraised value of the collateral. The percentage varies with the riskiness of the collateral. Loans secured by the most stable collateral, homes, may be made in an amount up to 95 percent of the appraised value of the property. Loans secured by the most risky collateral, raw land to be developed, may be made in an amount up to 65 percent of the appraised value. Exceptions are made for loans to active farming operations and loans guaranteed by a Federal agency. The appropriate Federal banking agency may, for reasons of safety and soundness, increase or decrease the ratios.

SECTION 225. NONDISCRIMINATION

This section affirms that the FDIC Act is not intended to discriminate against State nonmember banks or State savings associations. This statement of purpose does not impair the FDIC's authority under other provisions of law (e.g., its authority under section 222 of the bill to restrict activities of a State savings association that pose a serious risk of loss to the deposit insurance fund).

SECTION 226. BROKERED DEPOSITS

Under this section, an insured financial institution may not accept any new deposits by or through a deposit broker if the FDIC has determined that the institution is not in compliance with its applicable capital standards. The FDIC may waive this restriction for a given institution if it finds that acceptance of brokered deposits by that institution would not constitute an unsafe or unsound practice.

SECTION 227. CONTRACTS BETWEEN FINANCIAL INSTITUTIONS AND PERSONS PROVIDING GOODS, PRODUCTS OR SERVICES

Under this section, an insured financial institution or financial institution holding company may not enter into any contract that requires a person supplying goods or services to that institution or holding company also to purchase any asset of the institution or holding company (if the asset is not directly related to providing such goods or services), to invest in the stock of the institution or holding company, to make any other type of investment in the institution or holding company, or to make a deposit in that institution or an affiliated institution. However, the prohibition applies only if the purchase, investment, or deposit (1) would have an anticompetitive effect that would be prohibited under the antitrust laws, or (2) would adversely affect the safety or soundness of the financial institution or holding company involved (as determined by the appropriate Federal banking agency). Thus, for example, a financial institution that contracts to sell a vendor an asset at a price above market value in exchange for a long-term service contract on terms favorable to the vendor, would be in violation of the prohibition if the appropriate Federal banking agency determined that the contractual terms were intended to artificially inflate the institution's capital and would thus adversely affect the institution's safety or soundness. This section creates no private right of action.

This section requires the General Accounting Office to study the contracting practices prevailing between vendors and insured financial institutions and holding companies and the extent to which such contracts have been used to erode the financial integrity of such institutions and holding companies, and to report to the House and Senate Banking Committees within six months after the bill becomes law.

This section does not limit the authority of any Federal banking agency or any other unit of the Government to act against anti-competitive, unsafe, or unsound practices.

TITLE III—CHAIRMAN OF THE OFFICE OF SAVINGS ASSOCIATIONS

SECTION 301. RECODIFICATION OF THE HOME OWNERS' LOAN ACT OF 1933

The bill dissolves the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation, transfers to the Chairman of the Office of Savings Associations (the "Chairman" or "COSA") most of the regulatory authority over savings associations and savings and loan holding companies heretofore possessed by the Bank Board and FSLIC, repeals title IV of the National Housing Act (relating to FSLIC and its regulatory authority), and transfers to the Home Owners' Loan Act of 1933 ("HOLA") many of the provisions currently in title IV.

To facilitate these and other changes, this section reenacts the Home Owners' Loan Act. Under the new Act, COSA charters Federal savings associations and is the primary Federal regulator of all savings associations and savings and loan holding companies.

A. Definitions

1. Chairman

New section 2(1) of the Home Owners' Loan Act defines "Chairman" as the Chairman of the Office of Savings Associations.

2. Savings association

Under new section 2(2), "savings association" has the same meaning as in section 3(u) of the FDIC Act: (1) an institution whose accounts were insured by FSLIC immediately before the bill became law (and that has not subsequently become a bank); (2) a Federal savings and loan association or Federal savings bank; (3) a State savings and loan association, building and loan association, or homestead association; and (4) any other corporation that the FDIC determines to be operating in substantially the same manner as a savings and loan association.

3. Federal savings association

New section 2(3) defines "Federal savings association" to include a Federal savings bank that was previously chartered as a State savings bank and that became a Federal savings bank under section 5(o), even if the institution is a Bank Insurance Fund member.

4. Federal banking agencies

Under new section 2(4), "Federal banking agencies" means the Office of the Comptroller of the Currency, the Federal Reserve Board, and the FDIC.

B. Supervision of Savings Associations

1. Supervision of savings associations

New section 3(a) authorizes the Chairman to provide for the examination, safe and sound operation, and regulation of all savings associations. The overriding purpose of the Chairman's regulatory authority is to ensure that savings associations operate safely and soundly and, while so doing, provide credit for housing.

2. Accounting standards

New section 3(b) requires the Chairman to prescribe uniform accounting and disclosure standards for all savings associations, for use in determining compliance with all applicable regulations. The accounting standards must incorporate generally accepted accounting principles to the same extent that such principles are used to determine compliance with regulations of the Federal banking agencies. Under new section 3(c), moreover, the accounting standards must be no less stringent than those of the Comptroller of the Currency.

The Chairman should require savings associations to achieve full compliance with the accounting standards as soon as possible, but in no event later than under the schedule currently provided in section 563.23-3 of title 12, Code of Federal Regulations. No deviation from the standards is permissible after December 31, 1993. The Chairman may at any time promulgate more stringent accounting standards if he determines that they are necessary to ensure the safe and sound operation of savings associations. A standard is more stringent to the extent that it is more conservative in valuing assets or liabilities or in timing the recognition of income or expenses.

3. Stringency of standards

Under new section 3(c), all regulations and policies of COSA relating to the safe and sound operation of savings associations—including policies relating to accounting, asset classification, and appraisals—must be at least as stringent as the regulations and policies of the Office of the Comptroller of the Currency.

4. Accounts at savings associations as legal investments

New section 3(d) preserves current law permitting certain public, fiduciary, and corporate funds to be deposited in insured savings associations.

5. Prohibition on involvement in lotteries

New section 3(e) preserves current law prohibiting insured savings associations from participating in lotteries (other than accepting funds from, or performing lawful services for, State-sponsored lotteries).

6. Lending disclosures

Section 3(f) retains the current requirement that the true recipient of a mortgage loan be disclosed before any such loan is made to an agent or trustee.

7. Usury override

Current law overriding State usury limits under certain circumstances is transferred into new section 3(g) from the National Housing Act. The transfer in no way changes current law.

8. Issuance of securities

Under new section 3(h), a savings association needs the Chairman's prior approval to issue securities that guarantee a definite maturity date, and may not issue any securities except in a form approved by the Chairman. The National Housing Act currently contains a similar provision.

9. Audit

Section 3(i) creates a new statutory requirement that every savings association and service corporation must, at its own expense, be audited by an independent auditor at least once in each calendar year. COSA is to establish rules governing the selection of the auditor and the performance of the audit, as well as procedures for monitoring compliance with the auditing requirement. COSA may take appropriate action to assure compliance, such as requiring the auditor to perform the audit again at the auditor's own expense.

C. Chairman of the Office of Savings Associations

1. Establishment

Section 4(a)(1) establishes COSA as a bureau in the Department of the Treasury, and transfers to COSA all powers and functions of the Bank Board that are not otherwise transferred or terminated by the bill. Sixty days after the bill becomes law, the Federal Home Loan Bank Board will be dissolved by operation of law. During that 60-day period, the Chairman of the Bank Board may take whatever steps are necessary to carry out the dissolution of the Bank Board.

2. Duties

Under section 4(a)(2), the Chairman of the Office of Savings Associations shall supervise all savings associations and promulgate and enforce any regulations and orders necessary to carry out his statutory responsibilities. The Chairman shall perform his duties under the general direction of the Secretary of the Treasury, but the Secretary may not intervene in any matter or proceeding before the Chairman.

3. Appointment of Chairman

Under section 4(b), the Chairman shall be appointed by the President for a five-year term, subject to confirmation by the Senate. The President may remove the Chairman for cause.

The current Chairman of the Federal Home Loan Bank Board is to serve as the initial Chairman of the Office of Savings Associations until his term as Chairman of the Bank Board would have expired had the Bank Board remained in existence.

4. Appointment of staff

Section 4(c) authorizes the Chairman to employ and fix the compensation of his employees, attorneys, and agents. That compensation is to be determined solely by the Chairman, without regard to other provisions of law. In fixing that compensation, the Chairman shall consult, and seek to maintain comparability with the compensation at, the other Federal banking agencies. COSA and the other agencies should use such flexibility not to enter into a bidding war for other agencies' employees, but rather for all agencies to maintain comparable compensation at levels sufficient to attract and retain employees with specialized expertise needed to make sure that federally insured financial institutions operate safely and soundly.

5. Salaries and expenses

Under section 4(d), all expenses of COSA, including the salaries of the Chairman and other employees, are to be paid from assessments levied under the Home Owners' Loan Act. Those funds shall not be treated as Government funds or appropriated monies. Compensation (other than that of the Chairman) shall be paid without regard to other laws applicable to officers or employees of the United States.

6. Annual report and communications to Congress

Section 4(f) requires the Chairman to make an annual report to Congress.

Under section 4(g), whenever the Chairman submits any budget estimate or request to any officer or employee in the executive branch of the Government, he shall concurrently transmit copies of that estimate or request to Congress. Whenever the Chairman submits any legislative recommendation to the President or to the Office of Management and Budget (or any successor agency), he shall concurrently transmit copies of it to Congress. No officer or agency may require the Chairman to submit legislative recommendations or testimony to any other officer or agency for prior approval, comments, or review.

D. Liquidity

Under section 5A of the Federal Home Loan Bank Act, insured savings institutions and other members of a Federal home loan bank are currently required to hold certain liquid assets in the manner and amount prescribed by the Federal Home Loan Bank Board. New section 4A of the Home Owners' Loan Act retains this requirement, applies it to all savings associations, and substitutes COSA for the Bank Board.

E. Federal Savings Associations

1. Authority to charter

New section 5(a) transfers to COSA the Bank Board's current authority to charter, examine, and regulate Federal savings associations. Current law is also amended to emphasize that the lending and investment powers conferred on Federal savings associations by section 5 must be used safely and soundly.

2. Deposits

New section 5(b)(1) preserves the current authority of Federal savings associations to accept various types of accounts, including time and demand deposits. COSA, rather than the Bank Board, is to prescribe the appropriate rules governing those accounts.

3. Authority to borrow and issue capital stock

New section 5(b)(2) preserves current law authorizing Federal savings associations to borrow and to issue notes and other securities (including capital stock), with COSA rather than the Bank Board as the regulator.

4. Credit cards

New section 5(b)(4) retains current law permitting Federal savings associations to issue credit cards, with COSA rather than the Bank Board prescribing regulations.

5. Mutual capital certificates and net-worth certificates

New section 5(b)(5) preserves current law regarding mutual capital certificates and net-worth certificates, with COSA rather than the Bank Board as the regulator.

6. Loans and investments

Current law governing loans and other investments permissible for a Federal savings association is retained by new section 5(c), with the following changes:

(a) *COSA,* rather the Bank Board, is the regulator.

(b) A Federal savings association may currently devote up to 40 percent of its assets to *loans secured by nonresidential real property,* regardless of whether the association has any capital. Under new section 5(c) such loans may not, in the aggregate, exceed 400 percent of the savings association's capital. COSA is given limited discretion to allow such loans to account for a higher proportion of a savings association's capital. COSA must, however, find that the additional amount will pose no significant risk to the safe or sound operation of the institution involved, and that the increased authority is consistent with prudent operating practices. If an institution is permitted to exceed the 400-percent limit, COSA must closely monitor the institution's condition so as to ensure compliance with all applicable laws.

(c) Obsolete language authorizing Federal savings associations to make a limited amount of *commercial loans* before 1984 is deleted, and the current authority of a Federal savings association to devote up to 10 percent of its assets to commercial loans is retained.

7. Regulatory authority

New section 5(d) transfers to COSA the Bank Board's current authority to enforce the Home Owners' Loan Act, including authority to retain outside counsel, to sue and be sued, and to examine savings associations. The section specifically authorizes COSA to take enforcement action under section 8 of the Federal Deposit Insurance Act, and also incorporates the authority to examine savings associations and their affiliates that is currently in section 407(m) of the National Housing Act. COSA is entitled to prompt and complete access to the books, records, officers, directors, and employees of a savings association and its affiliates. If such access is not forthcoming, COSA may obtain injunctive relief from the appropriate district court.

8. Receiverships

New section 5(d)(2)(A) of The Home Owners' Loan Act adds three additional grounds of the appointment of a conservator or receiver for a Federal savings association. Two of these are included in the term "in danger of default," as defined in section 3 of the FDI Act (section 204 of the bill): illiquidity or threatened illiquidity, and threatened insolvency. The third ground is failure to obtain a bank charter when required to do so after failing the qualified thrift lender test.

New sections 5(d)(2) (C) and (E) incorporates with amendments former section 406(c)(1)(B) of the National Housing Act, which deals with the appointment of a conservator or receiver for a State savings association. The amendments permit a conservator or receiver to be appointed in cases of illiquidity, threatened illiquidity, or threatened insolvency. The amendments also reduce from 90 days to 30 days the period during which COSA must seek State approval for the custodial action.

New section 5(d)(2)(G) of HOLA specifies that only the FDIC may be appointed conservator or receiver to liquidate or wind up the affairs of a savings association.

Regulations issued by the COSA under new section 5(d)(3) will not apply to the FDIC or institutions in the FDIC's custody once the FDIC issues rules and regulations relating to its own conduct as conservator and receiver (section 214 of the bill).

9. Money laundering

New section 5(d)(6) consolidates provisions of current law requiring insured savings associations to establish procedures designed to ensure and monitor compliance with money-laundering statutes.

10. Character and responsibility

New section 5(e) preserves current law allowing a Federal charter to be granted only to persons of good character and responsibility.

11. Federal home loan bank membership

New section 5(f) preserves current law requiring each Federal savings association to be a member of the appropriate Federal home loan bank.

12. Preferred shares

New section 5(g) repeals obsolete provisions permitting the Secretary of the Treasury to purchase preferred shares of Federal savings associations, and authorizing the Bank Board to require the Secretary to purchase such shares under certain circumstances.

13. Taxation

New section 5(h) maintains Federal savings associations' current exemption from discriminatory State and local taxation.

14. Conversions

Under current law, a qualified State savings association may become a Federal savings association, and a Federal savings association may become a State savings association if the conversion is permitted by the State and authorized by the association's shareholders or members. Mutual savings associations that become stock savings associations must comply with procedures intended to ensure equitable treatment for all members of the mutual association.

New section 5(i) preserves these provisions, with COSA rather than the Bank Board as the regulator.

15. Conversions of State savings banks into Federal savings banks

Under section 5(i)(5), the Bank Board may currently permit: (1) a Federal savings bank chartered as such before October 15, 1982, to continue to make investments or engage in activities that were permissible for it as a Federal savings bank before that date; and (2) a Federal savings bank formerly organized as a mutual savings bank under State law to continue to make investments or engage in activities not otherwise authorized for Federal savings associations, to the degree it was authorized to do so as a mutual savings bank under State law. If a Federal savings association acquires (by merger or consolidation) a Federal savings bank enjoying the benefits of section 5(i)(5), the savings association may continue to enjoy those benefits.

New section 5(i)(4) retains those provisions, with COSA rather than the Bank Board as the regulator. COSA should make full use of its authority to circumscribe or prohibit any grandfathered activities that pose excessive risks to the institution in question or to the pertinent deposit insurance fund. This seciton in no way affects the FDIC's authority under sections 222 and 402(e) of the bill.

16. Subscription for shares

New section 5(j) repeals an obsolete provision under which the Bank Board could require the Secretary of the Treasury to purchase certain shares of a Federal association.

17. Depository of public money

New section 5(k) preserves current law permitting the Secretary of the Treasury to designate any Federal savings association or member of a Federal Home Loan Bank as a depository of public funds and as a fiscal agent for the Government, and expands that provision to include insured State savings associations that are not members of a Federal home loan bank.

18. Retirement accounts

New section 5(l) retains existing authority for a Federal savings association to act as trustee of any trust organized in the United States and forming part of a qualified stock-bonus, pension, or profit-sharing plan.

19. Branching

New section 5(m) preserves current law requiring prior Bank Board approval either for branching by savings associations located in the District of Columbia, or for branching into the District of Columbia. COSA, rather than the Bank Board, is the regulator.

20. Trusts

New section 5(n) preserves current law, under which a Federal savings association may receive a special permit (when consistent with State law) authorizing the association to provide trust services and otherwise act as a fiduciary.

21. Conversion of certain State savings banks

Section 5(o) currently authorizes FDIC-insured State savings banks to become FDIC-insured Federal savings banks. The FDIC is also granted certain emergency powers to require an FDIC-insured savings bank in danger of closing to become a Federal stock savings bank.

New section 5(o) provides similar authority for a BIF-member State savings bank to become a BIF-member Federal savings bank, and for the FDIC to require a State savings bank in danger of closing to become a Federal stock savings bank.

22. Tying

New section 5(q) consolidates anti-tying restrictions on Federal and State savings associations—which are currently in section 408(q)(1) of the National Housing Act as well as in section 5(q)—and makes COSA the regulator.

23. Out-of-State branches

New section 5(r) retains current law regarding out-of-State branching by Federal savings associations.

24. Minimum capital requirements

Under current law, the Bank Board must establish minimum capital standards for all thrift institutions and require all institutions to meet those standards. The Bank Board may also establish different capital levels for particular institutions. Failure to comply may be treated as an unsafe or unsound practice. The Bank Board may require an institution to submit and adhere to a plan for increasing its capital. Progress in complying with the plan is to be considered whenever the institution seeks regulatory approval for any action that might impede progress towards achieving the required capital level. New section 5(s) preserves these provisions, but with COSA rather than the Bank Board as the regulator. Under section 5(s), COSA can require a given institution to meet capital standards more stringent than the uniform standards prescribed under section 5(t).

25. Capital standards

New section 5(t)(1) requires COSA to establish capital standards for all savings associations, and provides penalties for any association that fails to comply with those standards.

(a) Capital standards to be promulgated by COSA

New section 5(t)(1) requires COSA to promulgate, within 90 days after the bill becomes law, final regulations setting uniform capital standards for savings associations, which must be fully implemented by June 1, 1991. The standards must be no less stringent than those applicable to national banks, and must require savings associations to meet standards no less stringent than both the "leverage ratio" and the risk-based capital standard applicable to national banks. The "leverage ratio" refers to capital requirements based on an institution's total assets without any adjustment based on the relative risk of the asset.

The risk-based capital standard refers to the capital requirement based on an institution's risk-weighted assets.

COSA's risk-based capital standard may deviate from that imposed on national banks to reflect interest rate or other risks, but any such deviations must not, taken as a whole, result in materially lower risk-based capital being required of savings associations than is required of national banks.

The leverage ratio applicable to savings associations must be no less stringent than that applicable to national banks, and must in any event be at least 3 percent of total assets, even if the leverage ratio applicable to national banks is some lesser percentage.

Finally, if the appropriate Federal banking agency ceases to impose risk-based capital standards on national banks, COSA must establish uniform capital standards that, taken as a whole, are no less stringent than the capital standards then applicable to national banks.

(b) Goodwill

New section 5(t)(2) permits a savings association to include certain goodwill to a limited extent in computing capital—both under the risk-based standard and under the leverage ratio—even if national bank capital standards would exclude such goodwill.

In accounting for the acquisition of an institution under the purchase method of accounting, goodwill represents the amount by which the purchase price exceeds the fair market value of the institution's identifiable assets. As the Comptroller of the Currency has observed, "The true market value of [goodwill and other] intangible assets is often difficult to ascertain, as it involves a number of assumptions which are subject to changes in general economic circumstances or to changes in an individual institution's future prospects. Experience has shown that the value of many intangibles declines when the condition of a bank deteriorates, the most critical point at which capital is needed. It is because of this inherent weakness in the value of certain intangibles that goodwill . . .

cannot be relied upon for capital support, and therefore [is] not counted in the determination of capital adequacy."

Goodwill shall be included under two circumstances. First, goodwill in existence on April 12, 1989, is to be included in calculating capital so long as the goodwill will be amortized on a straightline basis over the shorter of 25 years, or the remaining period for amortization in effect as of April 12, 1989. Second, goodwill resulting from the acquisition of a savings association or holding company for which the pertinent regulatory application was filed on or before March 12, 1989, shall be counted in calculating capital, so long as the goodwill is amortized on a straightline basis over 10 years or such shorter period as may be determined by COSA with the concurrence of the Secretary of the Treasury.

Every savings association must maintain tangible capital (excluding, e.g., goodwill) equal to at least 1.5 percent of the association's total assets. Any savings association that fails to do so is subject to consequences such as the growth restrictions of new section 5(t)(5) (discussed below).

(c) Separate capitalization for certain subsidiaries

In computing a savings association's capital, the savings association's entire investment in and extensions of credit to any subsidiary engaged as principal in activities not permissible for a national bank must be deducted from the savings association's capital. This rule, set forth in new section 5(t)(3), does not apply under the following circumstances:

(1) the subsidiary is engaged solely in mortgage-banking activities;

(2) the subsidiary is itself a savings association, or a company whose sole investment is a savings association, and was acquired by the parent savings association before April 12, 1989;

(3) the subsidiary invests in corporate debt securities that are not permissible for national banks to invest in, but does not engage as principal in any other activity impermissible for a national bank; or

(4) the parent savings association (a) is a Federal savings bank that was chartered before October 15, 1982, as a State savings bank, or (b) acquired its principal assets from an institution that was chartered before October 15, 1982, as a State savings bank.

(d) Transition rule

If a subsidiary is engaged in activities requiring the parent savings association to deduct from its capital its investment in and loans to the subsidiary, new section 5(t)(4) provides a transition rule. Under the rule, the parent may include in its computation of capital a certain percentage of its investments in and loans to the subsidiary on the date for which the parent's capital is being determined (or its investments in and loans to the subsidiary on April 12, 1989, whichever is less). The includible percentage declines each year over a five-year period so that after five years no such investment or loan may be included. Moreover, the FDIC may, by order, and in its sole discretion, require a particular institution to use a lower percentage than prescribed under the five-year phase-out if the FDIC determines that using the prescribed percentage would be unsafe or unsound.

(e) Schedule

The capital standards mandated by section 5(t) must be fully implemented by June 1, 1991, and COSA should prescribe a phase-in schedule culminating in full implementation by that date.

(f) Restrictions on growth

New section 5(t)(4) imposes certain consequences on savings associations that do not meet the capital standards applicable under section 5(t)(1). Until June 1, 1991, any institution not in compliance with applicable capital standards must submit a binding plan for increasing its capital. The plan must be acceptable to COSA, must set forth the types and levels of activities that the savings association will engage in to raise capital, and must provide for any growth in assets to be fully supported by increases in tangible capital equal in percentage amount to the applicable capital standard. COSA will retain discretion to further restrict the savings association's asset growth.

After June 1, 1991, asset growth by any savings association not in compliance with applicable capital standards must not exceed the amount of interest credited on the savings association's deposits, and must be limited to growth in residential-housing-related assets and consumer loans. Any growth in assets must be supported by tangible capital equal to at least 6 percent of the asset growth (or in COSA's discretion, tangible capital equal to the percentage required under the capital standard then in effect).

Any savings association that can meet minimum capital standards only by including goodwill must support any growth in assets by increases in tangible capital: before June 1, 1991, by tangible capital equal in percentage amount to the then-applicable capital standards; and after June 1, 1991, by tangible capital in an amount equal to 6 percent of the asset growth (or in COSA's discretion, tangible capital equal to the percentage required under the capital standard then in effect).

Finally, COSA may restrict the asset growth of any savings association that takes excessive risks or pays excessive rates for deposits, even if the savings association meets all capital standards.

26. Limits on loans to one borrower

New section 5(u) generally makes savings associations subject to the same limit on loans to one borrower as apply to national banks. The limits are incorporated by reference, and are self-executing.

A national bank's loans to one borrower are limited by statute to 15 percent of the bank's unimpaired capital and unimpaired surplus, except that loans to a given borrower "fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding" may account for an additional 10 percent of the bank's unimpaired capital and unimpaired surplus.

New section 5(c) exempts from the general rule two classes of loans by savings associations: (1) loans made to finance the sale of

property that a savings association acquired by foreclosure in satisfaction of a debt previously contracted in good faith, which may be as much as 50 percent of the savings association's unimpaired capital and unimpaired surplus; and (2) loans of up to $500,000. The $500,000 exception is intended to facilitate residential mortgage loans.

27. Reports of condition

Under new section (5)(v), every savings association must submit reports of condition that identify potential interest-rate and credit risks, the type and value of assistance received, the identity of all subsidiaries and affiliates, and equity investments made by the association and its affiliates, as well as any other information required by COSA. Information from the reports must be made available to the public upon request unless COSA determines (1) that a particular item or class of information should be withheld to protect the safety or soundness of the institutions involved, or (2) that disclosure of the information would not otherwise be in the public interest. COSA's determination not to permit disclosure must be in writing. If COSA decides to restrict disclosure of any item for savings associations generally, the reasons for the restriction must be published in the Federal Register. COSA may not withhold information from the Chairman and ranking minority member of the House or Senate Banking Committee.

F. Applicability

New section 7 preserves current law applying the Act to the United States, Puerto Rico, Guam, and the Virgin Islands.

G. District Associations

New section 8 preserves current law governing the regulation of savings associations doing business in the District of Columbia, with COSA rather than the Bank Board as the regulator.

H. User Fees; Penalty for Refusal to Permit Examination

New section 9 authorizes COSA to assess examination fees on savings associations and affiliated companies, including holding companies and their subsidiaries. COSA may also charge application fees. Moreover, fees may be assessed on any other institution for which COSA is the appropriate Federal regulatory agency (as defined in section 3 of the FDI Act), in proportion to the institution's assets or resources.

If any affiliate of a savings association refuses to permit an examination or to provide information requested by COSA, the savings association shall be subject to a civil penalty of up to $25,000 per day for each day that such refusal continues. A violation made with reckless disregard for the safety or soundness of the financial institution subjects the savings association to a civil penalty of up to $1 million per day.

To permit COSA to maintain a working capital fund, fees charged under this section may exceed actual expenses. Fee and assessment income may be used to pay all of COSA's salary expenses.

I. Regulation of Savings and Loan Holding Companies

Section 408 of the National Housing Act, also known as the Savings and Loan Holding Company Act, is transferred to section 10 of the Home Owners' Loan Act.

1. Definitions

The definitions currently found in section 408(a) are reenacted as section 10(a) of the Home Owners' Loan Act, and amended to take into account the abolition of FSLIC, the FDIC's new role as deposit insurer for savings associations, and the establishment of COSA, and to make corresponding changes in terminology.

2. Registration and examination

New section 10(b) preserves current law governing the registration and examination of savings and loan holding companies, with COSA rather than FSLIC as the regulator.

3. Holding company activities

New section 10(c) generally preserves current law regarding savings and loan holding company activities. New section 10(c)(8) exempts from the activity restrictions of the Savings and Loan Holding Company Act any bank holding company regulated as such by the Federal Reserve Board, for the Bank Holding Company Act already stringently limits such a company's activities.

4. Acquisitions

A savings and loan holding company must currently obtain FSLIC's prior approval before acquiring an additional savings association, and may not acquire shares of a savings institution that will not be a subsidiary. Interstate acquisitions of savings institutions are restricted. Section 10(e) preserves these provisions, with COSA instead of FSLIC as the regulator. Section 602 of the bill makes other substantive changes in these provisions, as will be discussed below.

5. Dividends

Under current law, a savings association subsidiary of a savings and loan holding company may not declare a dividend without giving FSLIC 30 days advance notice. This provision becomes section 10(f) of the Home Owners' Loan Act, with COSA as the regulator.

6. Administration and enforcement

Current provisions authorizing FSLIC to issue regulations, examine savings and loan holding companies and affiliated companies, and take enforcement action (including requiring holding companies to divest subsidiaries) become section 10(g) of the Home Owners' Loan Act, with COSA as the regulator.

7. Penalties

Any company that willfully violates any provision of the Savings and Loan Holding Company Act or any regulation or order issued under the Act may be fined up to $1,000 per day. Any individual who willfully commits such a violation may be fined up to $10,000, imprisoned for up to one year, or both.

Under new section 10(i) of the Home Owners' Loan Act, any company that willfully commits such a violation may be fined up to $1 million per day. Any individual who, with reckless disregard for the safety and soundness of the savings association, participates in such a violation may be fined up to $1 million per day, imprisoned for up to 5 years, or both.

Any individual or company that willfully participates in a violation of any statutory provision governing savings and loan holding companies, or any regulation or order issued under such a provision, is subject to a civil penalty of up to $1 million per day. If the violation is not willful, the maximum civil penalty is $25,000 per day.

COSA's authority to act under section 10(i) is not affected by an individual's resignation or any other termination of the individual's employment.

8. Judicial review

Section 10(k) preserves current law regarding judicial review of enforcement orders.

9. Treatment of FDIC-insured State savings banks and cooperative banks as savings associations

Under current law, an FDIC-insured savings bank or cooperative bank may, if it meets the qualified thrift lender test, elect to be regulated under the Savings and Loan Holding Company Act rather than the Bank Holding Company Act. New section 10(l) retains that provision, with COSA as the regulator.

10. Qualified thrift lender test

The qualified thrift lender test (or "QTL test"), currently section 408(o) of the National Housing Act, is intended to measure a thrift institution's involvement in housing finance. New section 10(m) of the Home Owners' Loan Act reenacts the current test and increases the consequences of failing to comply. (Those additional consequences are preserved in section 303 of the bill, which revises the QTL test, effective July 1, 1991.)

a. Current consequences of failing to comply

Under current law, there are two consequences. First, under section 10(e) of the Federal Home Loan Bank Act, a thrift institution that fails the QTL test is eligible to receive only a reduced amount of Federal home loan bank advances. Second, under section 408(c) of the National Housing Act, a diversified savings and loan holding company is subject to the same activity restrictions as a multiple savings and loan holding company if any of its subsidiary thrift institutions fails the test. The QTL test discussed here has no tax consequences; the Internal Revenue Code contains its own criteria for determining whether thrift institutions may qualify for benefits under certain tax provisions.

b. Additional consequences under this section

Under new section 10(m), a savings association that fails to remain a qualified thrift lender will have a one-year grace period in which to requalify as a qualified thrift lender. If it fails to requalify during that period, the savings association must convert its charter to one or more bank charters within three years after it ceased to be a qualified thrift lender. As soon as a savings association ceases to be a qualified thrift lender, it may not expand its activities or open any additional branch offices. Three additional consequences take effect beginning three years after the savings association ceases to be a qualified thrift lender. First, the savings association may not obtain advances from any Federal home loan bank, and must promptly repay any outstanding advances. Second, the savings association may not engage, directly or through a subsidiary, in any activity that is not permissible either for a national bank or for a State bank (other than a savings bank) located in the State in which the savings association is located. Third, any company that controls the savings association will become subject to the Bank Holding Company Act in the same manner and to the same extent as if the company were a bank holding company (other than a savings bank holding company) and the savings association were a bank (other than a savings bank).

c. Conversion does not affect deposit insurance premiums

Any bank that is chartered pursuant to section 10(m) because of a savings association's failure to remain a qualified thrift lender must remain a member of the Savings Association Insurance Fund and pay SAIF assessments until it pays the exit fee (section 206(6) of the bill) and becomes a member of the Bank Insurance Fund, having paid any applicable entrance fee. In no case can such a bank become a BIF member before January 1, 1994. Such a bank does not become subject to BIF assessments until it becomes a BIF member.

11. Tying restrictions

Section 10(n) preserves section 408(q)(2) of the National Housing Act, which currently prohibits a savings and loan holding company and its affiliates from engaging in certain tying arrangements.

12. Mutual holding companies

Under section 10(o), a mutual savings association may form a holding company though a special entity known as a "mutual holding company." This preserves what is currently section 408(s) of the National Housing Act, but makes COSA the regulator.

J. Transactions With Affiliates, and Insider Lending

Transactions between thrift institutions and their affiliates are currently governed by section 408 (d), (p)(1), and (t) of the National Housing Act. The bill replaces those subsections with a new section 11 in the Home Owners' Loan Act. Section 11 establishes a uniform approach to regulating transactions with affiliates, based on sections 23A, 23B, and 22(h) of the Federal Reserve Act. The limits in those sections are incorporated by reference, and are self-executing.

1. Transactions with affiliates: sections 23A and 23B

Under new section 11(a), a savings association must comply with sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as if the savings association were a member bank. Section 23A limits a bank's transactions with its affiliates (e.g., loans, extensions of credit, guarantees, investments, and purchases of assets). Transactions with any one affiliate are limited to 10 percent of the bank's capital stock and surplus, and transactions with all affiliates are limited to 20 percent of the bank's capital stock and surplus. All transactions with affiliates must be fully secured by specified types of collateral furnishing prescribed margins of protection. A bank may not purchase a low-quality asset from an affiliate unless it committed itself to do so before the affiliate acquired the asset.

Under section 23B, transactions between a bank and its affiliates must be on terms at least as favorable to the bank as comparable transactions with unaffiliated companies. When a bank acts as a fiduciary, section 23B limits purchases of securities or other assets from an affiliate. The section also prohibits a bank from advertising or agreeing that the bank will be responsible for an affiliate's obligations.

Three additional rules apply to savings associations under new section 11(a), reflecting the fact that affiliates of savings associations can engage in a far greater range of activities than affiliates of banks, and can thus expose the savings association to greater risk. First, a savings association may not make any loan or other extension of credit to an affiliate unless that affiliate is engaged only in activities permissible for bank holding companies. Second, a savings association may not purchase or invest in securities issued by an affiliate. Third, except as provided in section 304 of the bill (relating to certain mortgage-banking transactions), COSA may for reasons of safety and soundness impose more stringent restrictions on savings associations, but may not exempt transactions from or otherwise abridge section 23A or 23B. Exemptions from section 23A or 23B may be granted only by the Federal Reserve Board, as is currently the case with respect to all FDIC-insured banks. In granting exemptions, the Board may distinguish between banks and savings associations if the situation warrants.

2. Loans to officers, directors, and principal shareholders: section 22(h)

New section 11(b) applies section 22(h) of the Federal Reserve Act to savings associations in the same manner and to the same extent that that section applies to member banks. Section 22(h) applies the following safeguards to loans and other extensions of credit by an FDIC-insured bank to its executive officers, directors, and principal shareholders (collectively "insiders") and to companies controlled by those persons:

> (1) An extension of credit to an insider or a company controlled by an insider must be made "on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other per-

sons" and must not "involve more than the normal risk of repayment or present other unfavorable features."

(2) An extension of credit to an insider or a company controlled by an insider must be approved in advance by a disinterested majority of the bank's board of directors if that extension of credit, when aggregated with all other outstanding extensions of credit to the insider and companies controlled by the insider, exceeds a certain threshold (currently set at the higher of $25,000 or 5 percent of the bank's unimpaired capital and unimpaired surplus).

(3) The extension of credit, when aggregated with all other outstanding extensions of credit to the insider and companies controlled by the insider, must not exceed the limit on loans by a national bank to a single borrower.

COSA may for reasons of safety and soundness impose more stringent restrictions on savings associations, but may not exempt transactions from or otherwise abridge section 22(h). Exemptions may be granted only by the Federal Reserve Board, as is currently the case with respect to all FDIC-insured banks.

K. Advertising

Under current law, the Bank Board regulates the advertising practices of Federal savings associations and FSLIC regulates the advertising practices of State savings associations. The bill adds a specific statutory provision prohibiting any sale, plan, or practice, or any advertising, by any savings associations, in violation of regulations promulgated by COSA.

L. Separability

Section 13 specifies that the provisions of the Home Owners' Loan Act are separable: if any provision is held invalid, the remainder of the Act will remain in force.

SECTION 302. REPEALS

This section repeals sections 407(m), 408, 409, 410, 413, 414, and 416 of the National Housing Act. (Section 405 of the bill repeals the remaining sections of title IV of that Act.) All of these sections except section 416 are reenacted as part of the Home Owners' Loan Act. Section 416 required the FSLIC to promulgate capital recovery regulations for troubled institutions, and is obsolete in light of amendments made by the bill. The bill repeals section 403(b), which imposes geographical limits on lending, and section 408(p)(2), which restricts cross-marketing by a diversified savings and loan holding company.

SECTION 303. QUALIFIED THRIFT LENDER TEST

The qualified thrift lender test seeks to measure a thrift institution's involvement in residential mortgage lending. New section 10(m) of the Home Owners' Loan Act (added by section 301 of the bill) increases the consequences of failing to meet the current test. This section revises the QTL test itself, effective July 1, 1991.

To satisfy the current QTL test, a thrift institution must hold 60 percent of its total tangible assets in: (1) loans, equity positions, or securities that are in some way related to residential real estate or mobile homes; and (2) premises, furnishings, and equipment used by the institution or its subsidiaries. Up to 10 percentage points of the 60-percent requirement may be met by counting: (a) liquid assets (e.g., money-market mutual funds and short-term, investment grade corporate debt securities); and (b) a mortgage-origination credit.

A. General Rule

1. Numerator: qualifying assets

The revised test requires that at least 60 percent of a savings association's "portfolio assets" (as defined below) consist of the following assets:

(1) residential mortgage loans;
(2) residential construction loans;
(3) home-improvement loans;
(4) home-repair loans;
(5) mobile-home loans;
(6) mortgage-backed securities; and
(7) home-equity loans, to the extent that the loans are used to purchase, refinance, construct, improve, or repair domestic residential housing or mobile homes.

In addition, there is a mortgage-origination credit for one half of the dollar value of residential mortgages originated and sold during the last 90 days, which may count towards as much as 5 percentage points of the 60-point test.

If a loan finances both residential and nonresidential property (e.g., both apartments and a shopping mall), only the residential portion of the loan counts towards the QTL test.

Because home-equity loans are often used to finance personal consumption or for other purposes unrelated to housing finance, the Chairman of the Office of Savings Associations is required to determine annually—based on a survey of industry-wide patterns—how much of savings associations' home-equity loans are used to purchase, finance, construct, improve, or repair domestic residential housing or mobile homes. COSA will determine a general percentage, and savings associations may then count towards the QTL test that percentage of their home-equity loans.

This section is intended to refocus the QTL test on residential mortgage lending and to prevent the inclusion of other assets by regulatory interpretation.

2. Denominator: portfolio assets

Under the revised test, the base against which the 60-percent requirement is applied is "portfolio assets." A savings association's portfolio assets consist of its total assets minus:

(1) the institution's own premises, furnishings, and equipment;
(2) liquid assets that regulators require the institution to hold; and

(3) goodwill and other intangible assets. Subtracting these three items from total assets ensures that they are treated neutrally: they do not count either towards the 60-percent requirement or against the remaining 40 percent.

B. Consistent Accounting Required

Under the current test, FSLIC permits thrift institutions to use different accounting for the numerator of the QTL test (qualifying assets) than for the denominator (total tangible assets). Some assets that have appreciated in value are included in the numerator at market value but in the denominator at historic cost. Intangible assets (such as the value attributed to mortgage-servicing rights, purchased deposits, and branch networks) and leasehold improvements are included in the numerator but not in the denominator. Likewise, the assets of subsidiaries are included in the numerator but not in the denominator.

Under the revised test, the same accounting principles must be used for the numerator of the QTL test (qualifying assets) as for the denominator (portfolio assets). If a savings association counts the assets of a subsidiary towards the numerator, then those assets must also be counted towards the denominator.

C. Averaging

Under FSLIC's regulations, thrift institutions must meet the current QTL test on only 18 days out of every three years. This infrequent averaging facilitates manipulation.

The revised QTL test would be calculated using a daily or weekly average of a thrift institution's assets during the preceding two years.

SECTION 304. TRANSITIONAL RULE FOR CERTAIN TRANSACTIONS WITH AFFILIATES

Under new section 11(a) of the Home Owners' Loan Act (as added by section 301 of the bill), savings associations must comply with section 23A of the Federal Reserve Act, which imposes limits on transactions (e.g., loans and purchases of assets) between a depository institution and its affiliates. If an institution purchases a mortgage from an affiliate, the purchase counts towards the limits unless, before the affiliate originated or acquired the mortgage, the institution (1) had made its own independent credit evaluation of the mortgage, and (2) based on that evaluation, had agreed to acquire the mortgage from the affiliate. Under these circumstances, the institution is regarded as "taking advantage of an investment opportunity rather than being impelled by an improper incentive to alleviate working capital needs of the affiliate that are directly attributable to excessive outstanding commitments." 12 C.F.R. § 250.250(c). However, FSLIC's conflicts regulations currently preclude a thrift institution from following the above procedure without specific regulatory approval from FSLIC. Under section 402 of the bill, those regulations could remain in force as regulations of the Chairman of the Office of Savings Associations.

A. Revision of Current Regulations

This section requires COSA to revise the conflicts regulations so as not to prohibit a savings association that seeks to purchase mortgages from a mortgage-banking affiliate from following the above procedure for complying with section 23A. Revised regulations must take effect not later than six months after the bill becomes law.

B. Transitional Period

While COSA is revising its regulations and for six months after the date on which COSA prescribes final revised regulations, a transitional rule will apply to any savings association that, before April 12, 1989, had received approval from FSLIC pursuant to section 408(d)(6) of the National Housing Act as then in effect to purchase mortgages from a mortgage-banking affiliate. Such a savings association may continue to engage during that period in the transactions for which it had received regulatory approval. Instead of being subject to section 23A, those transactions will be subject to the standards applicable under section 408(d)(6) (e.g., by statute, regulation, interpretation, or order) before the bill became law.

If any regulatory approvals given by FSLIC lapse during the transitional period, COSA may extend them for the remainder of that period, using the standards applicable under section 408(d)(6) before the bill became law.

TITLE IV—DISSOLUTION AND TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

SECTION 401. DISSOLUTION

Subsection (a) of this section dissolves the Federal Savings and Loan Insurance Corporation 60 days after the bill becomes law. Subsection (b) transfers to the FDIC or the Resolution Trust Corporation all of FSLIC's functions that are not transferred to the Chairman of the Office of Savings Associations under other provisions of the bill.

SECTION 402. CONTINUATION OF RULES

A. Continuation of Rules; Allocation of Authority

Subsection (a) preserves in effect all of FSLIC's rules, regulations, and orders relating to insurance of accounts, administration of the insurance fund, or the conduct of conservatorships or receiverships except to the extent that the FDIC, after consulting COSA, determines otherwise. The FDIC or the Resolution Trust Corporation will enforce the rules, regulations, and orders that remain in effect. Subsection (b) preserves in effect all FSLIC rules, regulations, orders, and administrative actions not covered by subsection (a), and provides that they will be enforced by the FDIC unless they relate to a function transferred to COSA, in which case COSA will enforce them.

Subsection (c) requires the Chairman of the FDIC and the Chairman of the Office of Savings Associations, within 60 days after the bill becomes law, to publish in the Federal Register notice of which rules, regulations, and orders covered by subsection (a) or (b) have been allocated to which agency.

Subsection (d) contains a savings provision that preserves in effect all orders, determinations, rules, and regulations issued by FSLIC until modified or set aside by the FDIC or COSA.

B. FDIC's Authority to Prevent Risky Actions and Practices

Subsection (e) authorizes the FDIC to promulgate and enforce rules, regulations, and orders to prevent actions or practices of State or Federal savings associations that pose a serious threat of loss to the pertinent deposit insurance fund.

SECTION 403. PERSONNEL

A. Identifying Bank Board and FSLIC Employees for Transfer

Subsection (a) requires the Chairman of the Office of Savings Associations and the Chairman of the FDIC to jointly determine (1) which Bank Board and FSLIC employees were engaged in functions or activities transferred under the Act to the FDIC; and (2) which of those employees so identified will be transferred to the FDIC. Those decisions must be free from discriminatory or other prohibited personnel practices.

B. Rights of Employees Identified for Transfer

Subsection (b) enumerates the rights of employees who are identified for transfer to the FDIC:

(1) Employees who are identified for transfer to the FDIC will be offered an FDIC position of the same status as their former positions at the Bank Board or FSLIC.

(2) The Office of Personnel Management previously gave the Bank Board excepted-service appointing authority that allowed the Bank Board to hire up to 500 Schedule B employees without following normal competitive procedures. This section transfers that authority to the FDIC, allowing the FDIC to continue to employ those persons.

(3) Employees identified for transfer will be transferred to the FDIC within 60 days after the bill becomes law. After transfer, employees will be placed in a manner consistent with part 351 of title 5, Code of Federal Regulations. Transfers from the Bank Board or FSLIC to the FDIC will, for purposes of determining assignment rights, be treated as transfers of functions. If a reduction in force occurs, transferred employees will have assignment rights under OPM regulations. Transferred employees will receive notice of their assignment rights within 120 days after their transfers.

(4) For purposes of initial placement, the FDIC may place transferred employees into competitive areas separate from those existing at the FDIC. But once placement is completed, the competitive areas should be realigned to eliminate such separate competitive areas.

The FDIC may assign excepted-service employees to competitive-service positions, and employees so assigned will thereafter receive career or career-conditional appointments.

(5) Transferred Senior Executive Service employees will be placed in comparable executive positions at the FDIC.

(6) Transferred employees will receive notice of their position assignments within 120 days after their transfers.

(7) Transferred employees will retain their pay and grades under the principles of OPM regulations. Although the FDIC does not use the General Schedule, it does have a similar schedule. Transferred employees who become FDIC employees will receive the pay that would normally accompany their new FDIC grade.

(8) COSA will give any employee who is in a transferred function but who declines to be transferred severance pay consistent with OPM regulations promulgated under section 5595 of title 5, United States Code, except that severance pay shall in any case be at least 90 days pay. Such employees will also receive placement assistance, consistent with OPM regulations.

(9) Excepted-service employees, who do not otherwise qualify for placement assistance under OPM regulations, will nonetheless receive placement assistance for up to 120 days if they decline to be transferred.

(10) Employees who are asked to transfer and who decline an unreasonable offer of employment, as defined in OPM regulations, will receive severance pay and placement assistance. If such employees are otherwise eligible for early optional retirement, they will receive that as well. COSA will pay severance pay and placement assistance, as well as early optional retirement to the extent that retirement benefits are not funded from contributions made before the transfer.

(11) If the FDIC decides to reorganize its combined work force within one year after the transfer of functions, the reorganization will be a major reorganization for purposes of offering early optional retirement.

(12) If COSA continues the Bank Board's employee-benefit programs, employees transferred to the FDIC may retain their membership in those programs until the end of the calendar year. COSA will pay any difference in cost between FDIC programs and the benefits allowed by this section.

(13) Transferred employees who constitute an appropriate unit for labor union representation will be subject to union certification and collective bargaining structures in place at the FDIC (rather than to those currently applicable at the Bank Board).

SECTION 404. DIVISION OF PROPERTY AND PERSONNEL

This section requires the Chairman of the Office of Savings Associations and the Chairman of the FDIC to divide all personnel and property of FSLIC between their agencies within 60 days after the bill becomes law. The Director of the Office of Management and Budget will settle any disputes.

SECTION 405. REPEALS

This section repeals sections 401–406, 407 (except subsection (m)), 411, and 415 of the National Housing Act. Section 302(a) of the bill also repeals sections 407(m), 408–414, and 416 of that Act. The bill does, however, preserve many provisions of those sections as parts of other statutes.

SECTION 406. REPORT

This section requires FSLIC to provide a final written report to Congress, the Treasury, and the Office of Management and Budget.

TITLE V—FINANCING FOR THRIFT RESOLUTIONS

SUBTITLE A—RESOLUTION TRUST CORPORATION

SECTION 501. RESOLUTION TRUST CORPORATION ESTABLISHED

A. Purposes and Function of the RTC

This section adds a new section 21A to the Federal Home Loan Bank Act establishing the Resolution Trust Corporation ("RTC"), a mixed-ownership Government corporation. Neither the RTC nor its Oversight Board will constitute an "agency" or "executive agency" for purposes of title 5 of the United States Code.

The RTC's primary purposes are: (1) to resolve (e.g., as receiver or conservator) cases involving FSLIC-insured thrift institutions that entered receivership or conservatorship after January 1, 1989, but before the bill becomes law; (2) to act as receiver or conservator for FDIC-insured savings associations for which a receiver or liquidating conservator is appointed during the three years after the bill becomes law; (3) to manage and wind up the affairs of the Federal Asset Disposition Association ("FADA"); and (4) to conduct its operations so as to maximize recovery on assets it acquires, make efficient use of funds it obtains from the Funding Corporation, and minimize losses incurred in resolving cases.

In dealing with institutions in its custody, the RTC will exercise the FDIC's receivership and conservatorship powers. These include the power to liquidate an institution, operate it as a going concern, or facilitate its acquisition. This section also contemplates that the RTC will undertake obligations or assume liabilities only to the extent that it can fund them from the resources available to it under this section.

The RTC is to review assisted thrift acquisitions approved by FSLIC after January 1, 1988, report to the Oversight Board the results of that review, and exercise all existing legal rights to modify, renegotiate, or restructure assistance agreements on which savings can be realized. Any gains or losses from exercising such rights would accrue to the RTC or the FSLIC Resolution Fund, as the RTC determines.

In carrying out its responsibilities, the RTC should rely on private-sector services to the extent that such services are available and their use is practicable and efficient. The RTC must, whenever possible, take participation interests in insured institutions or their holding companies, or in the assets of institutions liquidated or otherwise resolved by the RTC.

The RTC will exist for five years, after which its assets and liabilities will pass to the FSLIC Resolution Fund created under section 215 of the bill.

B. Oversight Board

The RTC will operate under the direction of an Oversight Board chaired by the Secretary of the Treasury, and including the Attorney General, the Chairman of the Federal Reserve Board, and two persons chosen by the President of the United States from the private sector who have substantial experience in managing large business organizations engaged in relevant business activities. The Oversight Board will review and have overall responsibility for the RTC's activities. The Oversight Board must approve or disapprove, in its discretion, any RTC regulation, policy, procedure, guideline, statement, contract, or other action.

The Oversight Board shall select the RTC's chief executive officer, and may delegate its responsibilities to the chief executive officer or other employees of the RTC. The RTC may hire employees without regard to the civil service requirements of title 5, U.S. Code. The Oversight Board may also employ its own staff, on the same terms of employment as apply to the RTC itself. The compensation of RTC employees must be consistent with that of FDIC employees.

C. Performance of RTC Functions

The RTC will have both general corporate powers and certain special powers with which to perform its functions.

The RTC will rely upon the FDIC as its "primary manager" pursuant to an agreement between the RTC and the FDIC. The RTC may also contract with other parties. If the RTC is exercising the FDIC's powers as conservator or receiver, such contracts must accord with procedures applicable under the FDI Act. In all other cases, such contracts must be competitively bid.

D. Exemption From Taxation

The RTC will be exempt from taxation, other than taxes on real property.

E. FSLIC Liabilities

The RTC succeeds to the FSLIC's liabilities as guarantor of certain loans made by the Federal reserve banks and Federal home loan banks to insured savings associations before the bill becomes law. (This is the only liability of FSLIC that does not pass to the FSLIC Resolution Fund under section 215 of the bill.) The RTC must, within one year, repay any outstanding indebtedness not repaid by the savings associations in question.

F. Regulations and Procedures

The RTC may issue regulations, but need not comply with the Administrative Procedure Act. Regulations or procedures adopted by the RTC relating to its exercise of the FDIC's rights and powers under the FDI Act must, however, accord with that Act and with the FDIC's regulations.

The RTC must adopt written procedures for selling or otherwise disposing of insured institutions and their assets, and must document its decisions and reasons. Those procedures must provide for adequate competition, and fair and consistent treatment of offerors, and minimize the cost to the RTC and the Government.

G. Funding

To carry out its functions, the RTC will receive the net proceeds of the Resolution Funding Corporation's issuance of up to $50 billion of obligations, as well as whatever cash its activities generate. The RTC may also borrow up to $5 billion from the Treasury. The RTC cannot obligate the FDIC or any of its insurance funds.

H. Reports

The RTC must make both annual and semiannual reports to Congress. Annual reports must include financial statements, as well as the RTC's financial operating plans and forecasts. Semiannual reports must contain the same types of information as annual reports, plus certain items important for Congressional oversight.

The Comptroller General must audit the RTC annually, unless the Comptroller General notifies the RTC at least 180 days before the end of the fiscal year that he will not perform the audit. If the Comptroller General gives such notice, the RTC must arrange to be audited by an independent certified public accountant. The Comptroller General will have access to all books and records of the RTC and its agents.

I. Asset Disposal

The RTC must dispose of assets under its control so as to maximize the net present value of its return from those assets, minimize disruption to local markets, and provide the RTC with adequate capital. The RTC must document its decisions in order to demonstrate that it has followed plans and procedures consistent with those objectives.

The RTC must adopt special asset-disposition procedures to protect the economies of distressed areas. The RTC must set a minimum disposition price for real property that it owns before it sells that property. The procedures for setting that price, and the discretion granted to the chief executive officer or his designees to approve specific transactions for lesser amounts, are intended to protect against the dumping of assets while retaining the flexibility needed to make sound business decisions.

The RTC will establish regional advisory boards to bring local expertise to bear on the RTC's marketing, financial, and other strategic and policy decisions.

J. Standards of Conduct for RTC Employees

The RTC may either employ or contract with persons that will have responsibility for vast amounts of what are, in substance, Federal resources. To ensure that such persons act for the public good rather than for personal gain, the RTC must adopt conflict-of-interest and ethical standards at least as stringent as those applicable to FDIC employees. In addition, independent contractors and employees of the RTC will be subject to the same criminal sanctions as FDIC employees.

SUBTITLE B—RESOLUTION FUNDING CORPORATION

SECTION 502. RESOLUTION FUNDING CORPORATION ESTABLISHED

A. Purpose

This section adds a new section 21B to the Federal Home Loan Bank Act, establishing the Resolution Funding Corporation ("REFCORP"). REFCORP will raise funds for the RTC by issuing debt to the public. The Federal home loan banks ("FHL Banks") must invest in REFCORP, which in turn must invest in the RTC. Under subsection (b) of new section 21B, the Chairman of the Office of Savings Associations must charter REFCORP within five days after the bill becomes law.

B. Management of the Funding Corporation

Subsection (c) of new section 21B establishes a Directorate to manage the Funding Corporation, subject to supervision by the RTC Oversight Board. The Directorate will consist of the Director of the Office of Finance of the FHL Bank System, or his successor, and two FHL Bank presidents selected by the Oversight Board. One of the two FHL Bank presidents will be appointed for an initial term of three years and the other for an initial term of two years. After the initial terms have expired, each succeeding appointment shall be for a three-year term. The president of a given FHL Bank may not be selected to serve if there are other FHL Banks whose presidents have served fewer terms. The Oversight Board will select a chairperson of the Directorate from among its three members.

C. Compensation and Staff

Members of the Directorate will receive no compensation from REFCORP for serving on the Directorate. REFCORP will have no paid employees, but the Directorate may, with the Oversight Board's approval, use officers, employees, and agents of the FHL Banks to carry out REFCORP's functions.

The FHL Banks will pay all of REFCORP's administrative expenses, including custodian fees but excluding issuance and interest costs. Each FHL Bank will pay a pro-rata share of administrative expenses based on its required capital stock investment in REFCORP. "Issuance costs" and "custodian fees" are defined in subsection (k).

D. Powers of the Funding Corporation

Subsection (d) lists REFCORP's corporate powers, namely: (1) to issue nonvoting capital stock to the FHL Banks; (2) to purchase capital certificates issued by the RTC; (3) to issue debt; (4) to impose assessments on SAIF member institutions; (5) to adopt and use a corporate seal; (6) to have succession until dissolved; (7) to enter into contracts; (8) to sue and be sued; and (9) to exercise incidental powers necessary to carry out section 21B.

E. Regulation by the Oversight Board

REFCORP's Directorate will be subject to the regulations, orders, and directions of the RTC Oversight Board.

F. Capitalization of the Funding Corporation

Subsection (e) requires the FHL Banks to invest in REFCORP's nonvoting capital stock as prescribed by the Oversight Board, up to a maximum of $2,995.8 million, less amounts required to be invested after December 31, 1988, in the Financing Corporation (created under the Competitive Equality Banking Act of 1987). The stock issued by REFCORP to the FHL Banks will have a par value determined by the Oversight Board. The stock will be transferable only among the FHL Banks as prescribed by the Oversight Board, at not less than par value.

Paragraph (3) of subsection (e) limits the cumulative investment by any individual FHL Bank in REFCORP capitalization to the sum of the following:

> (1) the Bank's legal reserves and undivided profits on December 31, 1988, minus (a) the Bank's investments in the capital stock of the Financing Corporation and (b) reserves required by COSA to be set aside for certain administrative obligations; plus
>
> (2) the cumulative amount, after December 31, 1988, of additions to legal reserves and undivided profits, net of (a) funds invested in the Financing Corporation after that date, (b) reserves required by COSA to be maintained for certain administrative purposes; and
>
> (3) additional amounts, as necessary, determined by allocating any amount by which the amounts under item (2) above for all FHL Banks fall short of $300,000,000 per year.

If the FHL Banks' total investment under this test would be less than $300 million in a given year, an additional investment will be required (allocated among the FHL Banks under subsection (e)(5)) so that the total investment of all FHL Banks will be at least $300 million.

Paragraph (8) defines "undivided profits" as retained earnings less (1) legal reserves, and (2) amounts held in the dividend stabilization reserves account on December 31, 1985. "Legal reserves" means the amount each FHL Bank must carry in a reserve account pursuant to the first two sentences of section 16(a) of the Federal Home Loan Bank Act.

G. Allocation of Stock Purchases Among FHL Banks

Paragraphs (4) and (5) of new section 21B(e) describe the pro-rata distribution among the FHL Banks of purchases of Financing Corporation and REFCORP stock. Each FHL Bank must purchase a specified percentage of the first $1 billion of the combined stock issues of the REFCORP and the Financing Corporation. These percentages are the same as those currently in effect for allocating new issues of Financing Corporation stock.

Once the first $1 billion in stock has been purchased, paragraph (5) requires the RTC Oversight Board to allocate the FHL Banks' purchases of REFCORP stock according to the following formula: each FHL Bank's share equals the ratio arrived at by dividing the total assets of the Bank's SAIF-insured members by the total assets of all SAIF-insured members of all FHL Banks. Calculations for 1989 will, if necessary, be made by applying that same formula to the assets of all member insitutions that would have been SAIF-insured had the bill been in effect on December 31, 1988.

Paragraph (6) sets forth procedures for temporarily reallocating stock-purchase requirements when the amount a FHL Bank must purchase exceeds its investment limit.

H. Additional Sources of Funds for the Funding Corporation

Proceeds from the sale of REFCORP stock must be placed in the Funding Corporation Principal Fund. If each FHL Bank has reached its capital-stock investment limit and the Principal Fund needs additional amounts to defease REFCORP obligations, paragraph (7) sets forth the process and the order in which REFCORP will resort to other sources of funds. First, REFCORP, with the approval of the FDIC Board, will impose an assessment on each SAIF member in the same manner and under the same restrictions as FDIC insurance assessments. Any such assessments will count (dollar for dollar) against the statutory limits on SAIF assessments, and may thus reduce SAIF's assessment income. Second, if REFCORP still needs additional funds, the FDIC will transfer the necessary funds to REFCORP from the receivership proceeds of the FSLIC Resolution Fund.

I. Obligations of the Funding Corporation

Subsection (f) authorizes REFCORP, subject to the direction of the RTC, to issue up to $50 billion in debt obligations. REFCORP will pay the interest due (and any redemption premium) on those obligations from the following sources: (1) the net proceeds received by the RTC from liquidating institutions managed by the RTC, to the extent that the Oversight Board determines that those proceeds exceed the funds necessary for resolution costs: and (2) proceeds from warrants and participations acquired by the RTC.

If those funds do not cover the interest due on REFCORP obligations during a given year, the FHL Banks will jointly pay REFCORP $300 million minus whatever amounts the FHL Banks have paid (or should have paid) the Financing Corporation or REFCORP to purchase REFCORP stock. Individual FHL Banks' shares of those annual payments will be determined under a formula based on each FHL Bank's net earnings and share of the total advances made by all FHL Banks to SAIF members.

When the RTC is dissolved, its net assets will also be transferred to REFCORP to be used for interest payments.

If the Directorate determines, with the approval of the Secretary of the Treasury, that REFCORP cannot pay the interest due on its obligations from the sources described above, the Treasury will pay REFCORP whatever additional amounts REFCORP needs to make its interest payments. Any such Treasury payment will become a liability of REFCORP to be repaid to the Treasury once REFCORP is dissolved, to the extent that REFCORP has any remaining assets. Subsection (f) appropriates to the Secretary of the Treasury whatever amounts he will need to carry out that duty in fiscal year 1989 and thereafter.

When obligations issued by REFCORP under subsection (f) mature, they will be repaid by liquidating non-interest-bearing instruments held by the Funding Corporation Principal Fund.

J. Funding Corporation Obligations, Investments, and Assets

The net proceeds of REFCORP obligations will be used to buy capital certificates issued by the RTC or to repay earlier obligations whose proceeds were invested in such capital certificates.

REFCORP obligations are made lawful investments for all federally administered fiduciary, trust, and public funds.

All persons authorized to deal in various ways in FHL Bank obligations may deal similarly in REFCORP obligations.

REFCORP obligations will have the same tax status as FHL Bank obligations. Thus, for example, interest earned on REFCORP obligations will be subject to Federal income tax but not to State or local income taxes.

REFCORP obligations will be "exempt securities" under the Federal securities laws administered by the Securities and Exchange Commission.

The Oversight Board and the Directorate must ensure that minority owned or controlled commercial banks, investment banking firms, underwriters, and bond counsel have opportunities to participate significantly in any public or negotiated offerings of REFCORP obligations issued under section 21B.

REFCORP's obligations will be neither obligations of, nor guaranteed as to principal by, the Federal Home Loan Bank System, the FHL Banks, the United States, or the RTC. The Secretary of the Treasury will pay interest on REFCORP obligations as required by subsection (f).

Under new subsection (g), any assets that REFCORP is not required to invest in the RTC or apply to current interest payments will—subject to regulations, restrictions, and limitations prescribed by the RTC Oversight Board—be invested in Treasury securities, mortgage-related securities, or any other securities lawful for fiduciary and trust funds under the laws of any State. Earnings on those assets must be applied to interest due on REFCORP obligations before the sources described in subsection (f).

K. Funding Corporation Principal Fund

Subsection (g) further requires that funds received by REFCORP from sources specified in subsection (e) be invested in non-interest-bearing instruments such as Treasury STRIPS. REFCORP must hold those investments in a segregated account, the "Funding Corporation Principal Fund," to ensure repayment of the principal of those obligations. The total principal payable when the assets in that account mature will approximately equal REFCORP's debt principal. REFCORP may lend assets in the segregated account (with adequate collateral) to primary dealers in Treasury securities to facilitate market liquidity.

L. Miscellaneous Provisions

Paragraph (1) of new subsection (h) gives REFCORP the same tax status as the FHL Banks have under section 13 of the Federal Home Loan Bank Act. It also authorizes the Secretary of the Treasury to prepare the necessary forms of stocks, bonds, and other obligations, as approved by the Oversight Board, to be issued by the REFCORP.

Paragraph (2) permits the Federal Reserve banks to act as REFCORP depositories, fiscal agents, or custodians.

Paragraph (3) makes REFCORP a mixed-ownership Government corporation for purposes of certain sections of the Government Corporations Control Act. Thus REFCORP is subject to audit by the General Accounting Office, and REFCORP's accounts can be kept by the Secretary of the Treasury, a Federal reserve bank, or any bank designated as a depository or fiscal agent of the U.S. Government. The Secretary of the Treasury will prescribe the terms of REFCORP's obligations (including the form, denomination, maturity, and interest rate), the time and manner of issuance, and the price for which the obligations will be sold. REFCORP needs the Secretary's approval to buy or sell more than $100,000 of any direct obligation of the U.S. Government or any obligation on which the principal and interest are guaranteed by the Government (although the Secretary may waive this requirement).

Under paragraph (4), any civil action, suit, or proceeding to which REFCORP is a party will be deemed to arise under the laws of the United States. The U.S. District Court for the District of Columbia will have original jurisdiction over such cases. REFCORP may remove such cases from State court to the U.S. District Court for the District of Columbia without bond or security.

Paragraph (5) requires REFCORP to submit an annual report to the Senate, the House, and the President. The report will include audited financial statements prepared in accordance with generally accepted accounting principles, together with financial operating plans and forecasts (including estimates of actual spending, future spending, and actual and future noncash obligations that fully account for REFCORP's financial commitments, guarantees, and other contingent liabilities. REFCORP's financial statements must be audited annually by an independent certified public accountant.

New subsection (i) provides for REFCORP's termination and dissolution. REFCORP will dissolve as soon as practicable after all of its obligations have been retired. After REFCORP's dissolution, the RTC Oversight Board may exercise any of REFCORP's power in order to conclude REFCORP affairs. Upon REFCORP's dissolution, the Treasury will receive any remaining REFCORP funds up to the amount it provided REFCORP over the years, with interest. If any REFCORP funds remain after the Treasury is fully repaid, they will be paid to the FHL Banks to retire the capital stock.

New subsection (j) permits the Oversight Board to prescribe regulations necessary to carry out section 21B.

New subsection (k) defines certain terms used in new section 21B. Paragraph (2) defines "Oversight Board" as the Oversight Board of the RTC—and, after termination of the RTC, the Secretary of the Treasury, together with the Chairman of the Federal Reserve Board and the Attorney General of the United States. Paragraph (4) defines "issuance costs" as issuance fees and commissions incurred by REFCORP in issuing or servicing its obligations. Those costs include legal and accounting expenses, trustee and fiscal paying agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses to the extent those costs are incurred by REFCORP in connection with issuing any obligation. Paragraph (5) defines "custodian fees" as fees incurred by REFCORP in transferring securities to or holding them in the Funding Corporation Principal Fund, and other expenses associated with establishing and maintaining that fund.

SECTION 503. FINANCING CORPORATION

This section amends section 21 of the Federal Home Loan Bank Act, which established the Financing Corporation. Paragraphs (1) through (7) of this section make technical amendments to section 21, primarily to permit the Financing Corporation to buy capital certificates issued by the FSLIC Resolution Fund (the "Fund"), if necessary. Those certificates will not pay dividends. When the FSLIC Resolution Fund terminates, the Fund's liability for the certificates will be subordinate to any Fund liability to the Treasury.

This section replaces section 21(f) of the Act, which currently authorizes the Financing Corporation to impose assessments on FSLIC-insured institutions to obtain money to pay interest on Financing Corporation obligations. New subsection (f) specifies three sources of funds for such interest payments. First, such payments can be made out of funds raised through Financing Corporation assessments levied on insured institutions before the bill becomes law.

Second, the Financing Corporation, with the FDIC's approval, may assess each SAIF member as if it were the FDIC acting under section 7 of the Federal Deposit Insurance Act. The amount assessed by the Financing Corporation plus the amount assessed by REFCORP under section 21B of the Federal Home Loan Bank Act may not exceed the assessment amount authorized under section 7 of the Federal Deposit Insurance Act, but the Financing Corporation will have first priority to make such assessments. All assessments made by the Financing Corporation under section 21 and by REFCORP under section 21B will count (dollar for dollar) against the limits on SAIF assessments set forth in section 7 of the FDI Act.

Third, if funds available from the first two sources cannot cover the interest due on the Financing Corporation's obligations, the FDIC will transfer the required balance to the Financing Corporation from the receivership proceeds of the FSLIC Resolution Fund, if REFCORP does not need those funds for the Funding Corporation Principal Fund under section 21B.

This section also permits the Financing Corporation to lend zero-coupon securities held in a segregated account to primary dealers in Treasury securities. Finally, the section provides for the Financing Corporation to be dissolved on December 31, 2026, or when its obligations mature and are fully paid, whichever comes first.

SECTION 504. MIXED OWNERSHIP GOVERNMENT CORPORATION

This section adds REFCORP and the RTC to the list of mixed-ownership Government corporations under the Government Corporations Control Act.

SECTION 505. FEDERAL HOME LOAN BANK RESERVES

Section 16(a) of the Federal Home Loan Bank Act currently requires each FHL Bank to retain 20 percent of its net earnings as reserves. This section repeals that requirement, effective January 1, 1992. The directors of each FHL Bank may then independently determine what percentage of the Bank's net earnings to retain as reserves. For purposes of section 16, "net earnings" will be computed without reduction for expenses incurred by an FHL Bank in connection with investments in REFCORP.

TITLE VI—THRIFT ACQUISITION ENHANCEMENT PROVISIONS

SECTION 601. ACQUISITION OF THRIFT INSTITUTIONS BY BANK HOLDING COMPANIES

A. Current Law

A bank holding company may engage in a given nonbanking activity under section 4(c)(8) of the Bank Holding Company Act only if the Federal Reserve Board has determined that the activity is "so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has determined that the operation of a thrift institution is "closely related to banking" but is generally not a "proper incident thereto." *See, e.g., Citicorp*, 68 Fed. Res. Bull. 656 (1982). The Board has, however, permitted a bank holding company to operate a thrift institution if that institution had failed or was failing when the bank holding company acquired it. *See, e.g., id.* In approving such acquisitions, the Board has imposed certain limits on transactions between the thrift institution and other subsidiaries of the holding company, such as prohibiting the thrift institution from being "operated in tandem" with the other subsidiaries, and prohibiting the other subsidiaries from linking their deposit-taking activities to accounts at the thrift institution (e.g., through a sweep arrangement). *Id* at 659.

B. Discretion To Approve Acquisitions Under Section 4(c)(8)

This section of the bill specifically authorizes the Federal Reserve Board to permit a bank holding company to acquire a savings association pursuant to section 4(c)(8) of the Bank Holding Company Act, as described below.

1. Acquiring undercapitalized savings associations during the two years after the bill becomes law.—During the first two years after the bill becomes law, the Board may permit a bank holding company to acquire any savings association (1) that does not meet the capital standards prescribed by the Chairman of the Office of Savings Associations, or (2) whose tier 1 capital (as defined in COSA's risk-based capital regulations), excluding any goodwill, is less than 2 percent of the savings association's risk-adjusted assets.

2. Acquiring any savings association after that two-year period.—Beginning two years after the bill becomes law, the Board may permit a bank holding company to acquire *any* savings association.

C. Restrictions on Transactions Between the Savings Association and Its Affiliates

Effective immediately upon enactment, the Board may not impose restrictions on transactions between the savings association and its holding company affiliates except as required under sections 23A and 23B of the Federal Reserve Act or other applicable statutes. In addition, any orders issued before enactment must be modified to the extent that they contain restrictions not permissible under the preceding sentence.

D. Subsidiary Savings Association is Fully Subject to Section 4(c)(8)

This section in no way permits a savings association subsidiary of a bank holding company to engage, directly or indirectly, in any activity not permissible under section 4(c)(8). On the contrary, any acquisition of a savings association pursuant to this section must be made under section 4(c)(8), subject to all of the requirements, limitations, and procedures applicable under section 4.

SECTION 602. INVESTMENTS BY SAVINGS AND LOAN HOLDING COMPANIES IN UNAFFILIATED THRIFT INSTITUTIONS

A. General Rule

Section 408(e)(1)(A)(iii) of the National Housing Act (which the bill reenacts as section 10(e)(1)(A)(ii) of the Home Owners' Loan Act) prohibits a savings and loan holding company from acquiring any voting shares of a federally insured thrift institution—or a savings and loan holding company—that is not a subsidiary of the would-be acquirer. Thus a savings and loan holding company may not currently acquire voting shares of another savings and loan holding company or of a federally insured thrift institution unless it has, or is acquiring, control of that holding company or thrift institution.

This section permits a savings and loan holding company to acquire up to 5 percent of the outstanding voting shares of a savings association or a savings and loan holding company, even if the acquirer does not control the savings association or holding company that is the issuer of the shares.

Bank holding companies already have similar authority under section 4(c)(6) of the Bank Holding Company Act.

B. Exceptions

In determining compliance with the 5-percent limit described above, shares of a savings association or savings and loan holding company are not counted if they fall within the following seven categories:

(1) shares held as a bona fide fiduciary, with or without the sole discretion to vote the shares;

(2) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(3) shares held in an account solely for trading purposes (i.e., as a market-maker);

(4) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(5) shares acquired in securing or collecting a debt previously contracted in good faith, for two years after the date of acquisition (subject to extension by the Chairman of the Office of Savings Associations);

(6) shares acquired under section 13(k) of the Federal Deposit Insurance Act, which authorizes emergency acquistions of failed or failing savings associations; and

(7) shares held by insurance company subsidiaries of the parent holding company, so long as all shares held by such insurance companies pursuant to this exception do not in the aggregate exceed 1 percent of any class of shares of a given bank or thrift institution.

These exceptions are identical to certain provisions of section 4(f)(2)(A)(ii) of the Bank Holding Company Act, as amended by section 1414 of the bill, Thus, for example, exception (1), like the basic fiduciary exception in new section 4(f)(2)(A)(ii)(I), focuses on whether a holder of shares *acts* as a fiduciary rather than merely has the status of a fiduciary. Exception (5), like new section 4(f)(2)(A)(ii)(VI), is modeled on section 2(a)(5)(D) of the Bank Holding Company Act. The 1-percent limitation in exception (7), like that in new section 4(f)(2)(A)(ii)(VIII), prevents the exception from becoming an open-ended loophole under which the 5-percent restriction could be evaded merely by holding shares through one or more insurance companies.

SECTION 603. TECHNICAL AMENDMENT TO THE BANK HOLDING COMPANY ACT

The Bank Holding Company Act currently uses the term "insured institution" to refer to a federally insured thrift institution, and section 2(j) of that Act incorporates by reference the definition of "insured institution" in section 408(a)(1) of the National Housing Act.

This bill repeals section 408, and generally refers to thrift institutions as "savings associations." Accordingly, this section amends section 2(j) so as to encompass "savings associations," and to incorporate by reference the definition of "savings associations" in section 10(a)(1)(A) of the Home Owners' Loan Act.

TITLE VII—FEDERAL HOME LOAN BANK SYSTEM REFORMS

SUBTITLE A—FEDERAL HOME LOAN BANK ACT AMENDMENTS

SECTION 701. DEFINITIONS

This section amends section 2 of the Federal Home Loan Bank Act by replacing "Federal Loan Bank Board" with "Federal Home Loan Bank Agency," replacing "Board" with "Agency," and making conforming changes.

SECTION 702. FEDERAL HOME LOAN BANK AGENCY

Under section 17 of the Federal Home Loan Bank Act, the Federal home loan banks ("FHL Banks") are currently supervised and regulated by the Federal Home Loan Bank Board, which will be abolished under section 301 of the bill. This section amends section 17 to replace the Bank Board as supervisor and regulator of the FHL Banks with a new Federal Loan Bank Agency (the "Agency"). (Title III of the bill transfers the Bank Board's authority to regulate savings associations to a new Office of Savings Associations in the Department of the Treasury.)

The Federal Home Loan Bank Agency will be governed by a three-member board of directors, whose members will be appointed by the President for six-year terms, subject to confirmation by the Senate. Each person appointed as a director must have extensive experience or training in housing finance, as well as a commitment to the provision of specialized housing credit. No more than two directors may be from the same political party. No director may hold any other appointive office during his or her term.

The Agency may set the compensation of its employees without being bound by U.S. Government pay constraints. However, to avoid a bidding war to attract employees from one agency to another, the Agency must consult the Federal banking agencies in setting its employees' compensation, and that compensation must be comparable to that paid by the banking agencies.

The Agency's employees will not be officers or employees of the U.S. Government for purposes of title 5 of the U.S. Code. An agent of the Agency will, however, be an employee of the Government for purposes of section 2671 of title 28, which relates to tort liability.

The Agency may not delegate any of its functions to any employee or administrative unit of any FHL Bank.

All of the Agency's expenses, including the salaries of its employees and its board of directors, are to be paid from assessments levied on the FHL Banks. Those funds will not be treated as Government funds or appropriated monies, nor will they be subject to apportionment under title 31.

No member of the Agency's board of directors may have any direct or indirect financial interest in any institution that is a member of an FHL Bank.

The Agency may, for cause, suspend or remove any director, officer, or employee of an FHL Bank. The Agency must give the affected party written notice of the cause for the suspension or removal.

The Agency must report annually to Congress. Its reports should detail the operations of the Agency and the FHL Banks, and evaluate the Federal Home Loan Bank System's effectiveness in safely promoting affordable home financing, raising funds in the capital markets, and maintaining adequate capital.

SECTION 703. SHAREHOLDER ELIGIBILITY REQUIREMENTS

Section 4(a) of the Federal Home Loan Bank Act currently allows only thrift institutions and insurance companies to become members of a Federal home loan bank. Section 27 of that Act prohibits national banks from subscribing for stock of an FHL Bank.

This section repeals section 27, and amends section 4(a) to permit any federally insured bank or credit union to become a member of an FHL Bank, if the bank or credit union meets the qualified thrift lender test (sections 301 and 303 of the bill; also discussed below in connection with section 712). Any institution that is not a member of an FHL Bank on January 1, 1989, may become a member only if it meets the QTL test. The Agency may deny an application for membership if, in the Agency's judgment: (1) advances could not be safely made to the applicant; or (2) the applicant's management or home-financing policy is inconsistent with sound and economical home financing or with the purposes of the Federal Home Loan Bank Act.

SECTION 704. CAPITAL STOCK

This section deletes subsections (a), (e), (f), and (g) of section 6 of the Federal Home Loan Bank Act. These obsolete subsections governed the original issuance of FHL Bank stock, subscription for that stock by the Secretary of the Treasury, repurchase of stock held by the Treasury, and advances by the FHL Banks to State thrift institutions that were prohibited by State law from purchasing FHL Bank stock. This section of the bill also amends section 6(i) of the Act (redesignated as subsection 6(e)) to require any member that withdraws from, or is deprived of membership in an FHL Bank to repay all advances and pay a prepayment fee.

SECTION 705. ELECTION OF BANK DIRECTORS

This section amends section 7 of the Federal Home Loan Bank Act to require that two of the directors appointed by the Agency to serve on the board of each FHL Bank be selected based on their qualifications as representatives of consumers or persons of moderate income.

This section authorizes each FHL Bank to determine the conditions under which it may indemnify its directors and officers.

If a member institution does not meet all applicable capital standards, this section also prohibits any officer or director of that institution from serving as a director of an FHL Bank. Thus, for example, if a member institution ceases to meet any applicable capital standard, any officer or director of the institution must immediately resign from the FHL Bank's board of directors, even if the institution met all applicable capital standards when he or she was elected.

SECTION 706. STUDIES

This section replaces obsolete section 8 of the Federal Home Loan Bank Act (authorizing certain studies of State law) with a new section 8 authorizing the Agency or the FHL Banks to study trends in home and property values, methods of appraisal, and other relevant subjects.

SECTION 707. ELIGIBILITY OF BORROWERS TO OBTAIN ADVANCES

This section deletes from the Federal Home Loan Bank Act all references to nonmember borrowers. Any borrower from an FHL Bank must henceforth own stock in that FHL Bank.

SECTION 708. FEDERAL HOME LOAN BANK LENDING

This section amends section 11(k) of the Federal Home Loan Bank Act to authorize the FHL Banks to make loans to the FDIC for use by the Savings Association Insurance Fund, as directed by the FDIC. The interest rate on such a loan must be no less than the FHL Banks' current marginal cost of funds, taking into account the maturity involved. These loans must have COSA's concurrence and must be secured to COSA's satisfaction.

SECTION 709. FEDERAL SAVINGS AND LOAN ADVISORY COUNCIL

This section repeals section 8a of the Federal Home Loan Bank Act, thereby abolishing the Federal Savings and Loan Advisory Council.

SECTION 710. FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION INDUSTRY ADVISORY COMMITTEE

This section repeals section 21(i) of the Federal Home Loan Bank Act, therby abolishing the Federal Savings and Loan Insurance Corporation Industry Advisory Committee.

SECTION 711. RATE OF INTEREST

This section repeals section 5B of the Federal Home Loan Bank Act, which currently authorizes the Bank Board to regulate the payment and advertisement of interest paid to depositors by FSLIC-insured institutions. The authority to regulate interest rates is being transferred to COSA.

SECTION 712. ADVANCES

A. Advances Must Be Fully Secured by Eligible Collateral

Subsection (a) of this section amends section 10(a) of the Federal Home Loan Bank Act to specify that any advance or other extension of credit by an FHL Bank must be fully secured by one or more of the following: (1) fully disbursed home mortgage loans; (2) securities issued or guaranteed by the U.S. Government, or mortgage-backed securities issued or guaranteed by Freddie Mac, the Federal National Mortgage Association, or the Government National Mortgage Association; (3) deposits of an FHL Bank; or (4) real-estate-related collateral which has a readily ascertainable value and in which which the FHL Bank can perfect its security interest, so long as all such loans do not exceed 30 percent of the borrower's capital. However, this requirement does not limit an FHL Bank's authority to protect its security position on outstanding loans (e.g., by requiring additional collateral of any type). Long-term advances may be made *only* to provide funds for housing finance.

B. Special Requirements for Borrowers Not in Compliance with QTL Test

Subsection (b) of this section amends section 10(e) of the Federal Home Loan Bank Act, dealing with advances to current members that fail the qualified thrift lender test. Under sections 301 and 303 of the bill, a member savings association that ceases to be a qualified thrift lender has three years in which to become a bank. After the three-year period, it may not obtain advances and must repay any outstanding advances. This section governs advances to such a savings association during the three-year transitional period. The savings association may obtain advances only if it purchases and holds stock in its FHL Bank in the amounts that would be required if it had 60 percent of its assets in home mortgage loans. A member seeking advances pursuant to amended section 10(e) would still have to satisfy additional requirements set forth in the Federal Home Loan Bank Act, the Home Owners Loan Act, Agency regulations, and the FHL Bank's credit program.

SECTION 713. EXAMINATIONS

This section amends section 20 of the Federal Home Loan Bank Act to require periodic examinations of the FHL Banks by the Comptroller General. These examinations shall focus on the effectiveness of the FHL Banks and the Agency in fulfilling the purposes of the Federal Home Loan Bank Act.

SECTION 714. CONFORMING FEDERAL HOME LOAN BANK ACT AMENDMENTS

This section makes certain conforming amendments to the Federal Home Loan Bank Act and other statutes in keeping with section 702 of the bill, under which the Agency will be funded by assessments levied on the FHL Banks. This section also makes certain other conforming amendments.

SECTION 715. LIQUIDITY

This section repeals section 5A of the Federal Home Loan Bank Act, relating to liquidity requirements. Section 301 of the bill reenacts the substance of section 5A as section 4A of the Home Owner's Loan Act, but with liquidity requirements administered by the Chairman of the Office of Savings Associations rather than by the Bank Board.

SECTION 716. TRANSFERS

Under this section, FHL Bank employees who currently supervise and regulate savings associations will be transferred to the Office of Savings Associations. The section also provides for other incidental personnel transfers as agreed between COSA and the Agency.

SUBTITLE B—CONFORMING AMENDMENTS

SECTION 721. REPEAL OF LIMITATION OF OBLIGATION FOR ADMINISTRATIVE EXPENSES

This section deletes obsolete references to the Federal Home Loan Bank System, the Home Owners' Loan Corporation, and FSLIC in section 7(b) of the First Deficiency Appropriation Act of 1936.

SECTION 722. AMENDMENT OF ADDITIONAL POWERS OF CHAIRMAN

This section amends section 502(c) of the Housing Act of 1948 to give COSA the current authority of the Bank Board and FSLIC to contract with and otherwise utilize certain public and private resources in carrying out his duties.

SECTION 723. AMENDMENT OF EXECUTIVE SCHEDULE

This section specifies the compensation for certain newly-created positions by adding the Chairman of the Office of Savings Associations and the President of the Federal Home Loan Bank Agency to Level III of the Executive Schedule, and by adding the Agency's directors to Level IV of that schedule.

SECTION 724. AMENDMENT OF TITLE 31, UNITED STATES CODE

This section provides that the Office of Savings Associations is subject to the general oversight of the Secretary of the Treasury.

SECTION 725. AMENDMENT OF BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT

This section amends the Balanced Budget and Emergency Deficit Control Act of 1985 to exempt from sequestration the Office of Savings Associations, the FSLIC Resolution Fund, the RTC, the insurance funds administered by the FDIC, and payments to the Resolution Funding Corporation—just as the Bank Board and FSLIC are currently treated.

TITLE VIII—BANK CONSERVATION ACT AMENDMENTS

The Bank Conservation Act authorizes the Comptroller of the Currency to appoint a conservator for a national bank or a District of Columbia bank or trust company supervised by the Comptroller, if the Comptroller determines such action is necessary to conserve the bank's assets for depositors and other creditors. The Act was enacted in 1933 and has never been amended. The Comptroller has rarely invoked the Act since the Great Depression because of certain rigid constraints in the Act, such as a provision making the conservator's compensation subject to the Government pay scale, and an unwieldy requirement that new deposits be segregated from old deposits.

SECTION 801. DEFINITIONS

This section amends the Bank Conservation Act's definition of "bank" to include a Federal branch of a foreign bank, and any other federally chartered or licensed institution supervised by the Comptroller of the Currency.

SECTION 802. APPOINTMENT OF CONSERVATOR

A. Grounds for Appointment

This section amends section 203 of the Bank Conservation Act. New subsection (a) of section 203 clarifies the grounds for the Comptroller to appoint a conservator for a financial institution. Most of these grounds resemble the grounds for appointment of a conservator for a Federal savings association under section 5(d)(2) of the Home Owners' Loan Act.

B. Judicial Review

New subsection (b) provides for judicial review of the Comptroller's appointment of a conservator. The appointment may be set aside only if the court finds it to be arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law. Like section 5(d)(2) of the Home Owners' Loan Act, subsection (b) is intended to limit judicial interference in the conduct of conservatorships.

Subsection (b) also requires the court to stay for up to 90 days judicial proceedings to which the conservator or the bank is or may become a party, upon petition by the Comptroller.

New subsection (c) gives the Comptroller additional power to appoint a conservator if a majority of a bank's directors consent to the appointment, or if the FDIC terminates the bank's deposit insurance.

New subsection (d) makes exclusive the Comptroller's power to appoint conservators for banks, and permits the Comptroller to appoint as conservator the FDIC or any other person. The Comptroller may not appoint a conservator to liquidate or wind up the affairs of a bank (except insofar as section 804 of the bill permits a sale or voluntary liquidation).

New subsection (e) permits the Comptroller to replace a conservator at any time, without notice or hearing.

SECTION 803. EXAMINATIONS

This section authorizes the Comptroller, in carrying out his supervisory responsibilities, to use reports made by the FDIC as conservator. The Comptroller will continue to supervise national banks in conservatorship that are operated as going concerns.

SECTION 804. TERMINATION OF CONSERVATORSHIP

This section further defines the circumstances in which a conservatorship may be terminated. A conservatorship may be terminated when the Comptroller (together with the FDIC, when the FDIC is the conservator) believes termination is safe and in the public interest. Termination may occur (1) when the bank resumes business on terms prescribed by the Comptroller; (2) upon the sale, merger, consolidation, purchase and assumption, change in control, or voluntary liquidation of the bank; or (3) if the Comptroller declares the bank insolvent and places it in receivership.

If, on termination of a conservatorship, a bank resumes normal operations on terms imposed by the Comptroller, those terms will constitute an enforceable order, subject to judicial review. If a conservatorship terminates through a sale, change in control, or the like, any net proceeds of the transaction must be distributed to interested claimants, including shareholders, according to a specified notice and claims procedure.

SECTION 805. CONSERVATOR; POWERS AND DUTIES

This section amends section 206 of the Bank Conservation Act to clarify the scope of a conservator's management powers over the bank in conservatorship. These powers resemble those of a conservator for an insured savings association. Except as the Comptroller may otherwise provide by rule, regulation, or order, a conservator has the same rights and duties and is subject to the same penalties and requirements as apply to the directors, officers, or employees of the bank whose authority the conservator exercises.

The Comptroller may permit the conservator and persons retained to assist the conservator to be paid at rates exceeding Federal salary rates.

The Comptroller may direct the conservator to set aside funds to assure payment of depositors and other creditors.

This section preserves current law regarding the payment of conservatorship expenses from the bank's assets.

SECTION 806. LIABILITY PROTECTION

This section restates the limitations on the conservator's liability to third parties. The Federal Tort Claims Act governs if the conservator is a Federal agency or employee. In all other cases, the conservator is liable only for bad faith or gross negligence. The Comptroller may indemnify a conservator.

SECTION 807. RULES AND REGULATIONS

Under this section, regulations issued by the Comptroller must, insofar as they apply to cases in which the FDIC is conservator, must be consistent with the FDIC's regulations under the FDI Act.

SECTION 808. REPEALS

This section repeals sections 207 and 208 of the Bank Conservation Act. Section 207 currently permits a bank reorganization—which must be approved by depositors and other creditors, or stockholders, or both—to become effective only pursuant to a plan approved by the Comptroller and a supermajority of the interested parties. The repeal of section 207 will not impede the reorganization of banks in conservatorship. The conservator's power under section 206 (section 805 of the bill) to act for a bank's shareholders will greatly facilitate a reorganization. When the FDIC acts as conservator, it also has broad reorganization powers under section 11 of the FDI Act.

The repeal of current section 208 of the Bank Conservation Act, coupled with the amendment of section 206, removes the onerous requirement that new deposits be segregated from old deposits to prevent new deposits from being used to satisfy old deposit liabilities and to assure full payment on new deposits accepted during the conservatorship.

SECTION 809. CONFORMING AMENDMENT

This section adds conservators appointed under the Bank Conservation Act to the list of persons whom the Comptroller of the Currency may appoint without regard to section 5373 of title 5, United States Code, which (but for section 1404 of the bill) would prohibit the Comptroller from setting the compensation of a position or employee at more than the maximum rate for level V of the Executive Schedule.

TITLE IX—ENFORCEMENT AUTHORITY IMPROVEMENTS

SECTION 901. SHORT TITLE

This section designates this title as the "Enforcement Authority Improvements Act of 1989."

SUBTITLE A—REGULATION OF FINANCIAL INSTITUTIONS

SECTION 911. CHANGE IN TERMINOLOGY

The enforcement provisions currently use inconsistent terminology to define the scope of the Federal banking agencies' enforcement authority. For example, cease-and-desist orders may be issued against any "director, officer, employee, agent, or other person participating in the conduct of the affairs of an insured bank." Removal orders, on the other hand, may be issued only against directors or officers.

This section deletes the various terms used to describe the parties covered by the enforcement provisions and substitutes the new term "institution-related party." The term is defined (in section 3 of the Federal Deposit Insurance Act, as amended by section 204 of the bill) to include any director, officer, employee, agent, or other person participating in the conduct of the affairs of an insured bank or a subsidiary of an insured bank; any person who has filed or should have filed a change-in-control notice with the appropriate Federal banking agency; and any controlling shareholder. It also includes an "independent contractor," such an attorney, accountant, or appraiser, who knowingly or recklessly participates in a wrongful action that had or is likely to have an adverse effect on an insured institution. The additional requirement of knowing or reckless participation in a wrongful action applies only to an independent contractor who does not otherwise participate in a financial institution's affairs. Thus, for example, an attorney who is a director of a bank would automatically be an "institution-related party" even though the attorney may not knowingly or recklessly participate in a wrongful act.

SECTION 912. PERIODS APPLICABLE TO INSURANCE TERMINATION

Under current law, the FDIC may initiate a proceeding to terminate an insured bank's deposit insurance if the FDIC determines that the bank is engaging in an unsafe or unsound practice; is in an unsafe or unsound condition; or has violated any law, regulation, or condition imposed in writing in connection with the granting of an application or other request. First, the FDIC must give a statement of the problem to the bank and its primary Federal regulator (and in the case of a State bank, the State regulator). The bank must then correct the probem within 120 days, or such shorter period not less than 20 days as the FDIC or the appropriate Federal agency may determine. If the bank does not correct the problem, the FDIC may give the bank 30 days notice of the FDIC's intent to terminate insurance. The bank is then entitled to an administrative hearing. Following the hearing, the FDIC may issue an order terminating the bank's insurance. Existing deposits at that bank will then remain insured for two years, but new deposits will have no insurance.

This section of the bill reduces from 120 days to 60 days the maximum time an institution may take to correct violations. After insurance terminates, existing accounts will remain insured for at least six months and, at the FDIC's discretion, for up to two years.

SECTION 913. SUSPENSION OF INSURANCE

There is currently no procedure under which the FDIC may suspend insurance. This section adds a new section 8(a)(2) to the FDI Act, permitting the FDIC to issue a temporary order suspending deposit insurance on all deposits received by an insured institution. To issue such an order, the FDIC must find, after consultating with the appropriate Federal banking agency, that the financial institution has no tangible capital under the agency's capital standards. Such an order may take effect 10 days after service. Within the 10-day period, the institution may seek an injunction in U.S. district court. The court shall issue the injunction if it finds the FDIC's suspension order to be arbitrary or capricious.

A special rule applies for savings associations. Under that rule, the FDIC is to add goodwill to a savings association's tangible capital to the extent that such goodwill may be included in that savings association's capital under section 5(t) of the Home Owners' Loan Act. "Special supervisory associations" are those whose capital for purposes of section 8(a)(2) would be less than or equal to zero but for the inclusion of goodwill under the special rule.

The FDIC may suspend a special supervisory association's insurance if: (1) the association's capital suffers a material decline; (2) the association or any officer or director engages in any unsafe or unsound practice; (3) the association is in an unsafe or unsound condition; (4) the association or any officer or director violates any applicable law, rule, regulation, or order, or any condition imposed in writing; or (5) the association fails to enter into a capital-improvement plan within three months after the bill becomes law. The FDIC must examine every special supervisory association within three months after the bill becomes law and quarterly thereafter. Nothing in this section limits the right of the FDIC, as successor to FSLIC and the Bank Board, to enforce any contractual provision requiring a special supervisory association to amortize goodwill at a more rapid rate than would otherwise be required under Federal law or applicable accounting standards.

SECTION 914. RESTITUTION, REIMBURSEMENT, AND OTHER REMEDIES

A. Restitution, Reimbursement, and Indemnification

Section 8(b) of the Federal Deposit Insurance Act authorizes the Federal banking agencies to issue cease-and-desist orders, which may require an insured institution or its employees to "take affirmative action to correct the conditions resulting from any" violation. In *Larimore v. Comptroller of the Currency*, 789 F.2d 1244 (7th Cir. 1986), the court of appeals held that section 8(b) did not authorize the Comptroller to obtain reimbursement in an administrative proceeding from a director of a national bank who participated in a violation of the statutory lending limit.

The *Larimore* decision has created confusion about the Federal banking agencies' authority to order restitution, reimbursement, or other forms of indemnification. This section makes clear that the Comptroller as well as the other Federal banking agencies may order a party to make restitution to, reimburse, or otherwise indemnify an insured institution for losses resulting from violation of laws or other improper conduct. The banking agencies should use this power only in appropriate cases—for example, when the institution-related party has unjustly enriched himself at the institution's expense or has acted in reckless disregard of the banking laws or regulations. This power should not be used when the institution-related party has engaged in less serious violations or less serious conduct.

B. Restrictions on Activities

This section also permits a permanent cease-and-desist order (1) to limit or restrict the activities or functions of a financial institution or any institution-related party in order to correct the conditions resulting from any violation or practice; and (2) to limit a financial institution's asset growth.

SECTION 915. APPLICABILITY OF SECTION 8

This section applies the banking agencies' basic enforcement statute, section 8 of the FDI Act, to savings and loan holding companies and their subsidiaries (other than a bank or any subsidiary of a bank) and to any subsidiary of a savings association. COSA will be the regulator, unless the savings and loan holding company is also a bank holding company, in which case both COSA and the Federal Reserve Board will be the regulator.

SECTION 916. TEMPORARY CEASE-AND-DESIST ORDERS

Current law permits a Federal banking agency to issue a temporary cease-and-desist order if it finds that a violation, a threatened violation, or a practice is likely to (1) make a bank insolvent, (2) lead to *substantial* dissipation of the bank's assets or earnings, (3) *seriously* weaken the bank's condition or (4) *seriously* prejudice the interests of the bank's depositors, before a regular cease-and-desist proceeding could be completed. This section deletes the terms "substantial" and "seriously" from the above requirements, and specifies that a temporary order may limit the activities or functions of a financial institution or any institution-related party. Such limits may include prohibitions on the institution's asset growth.

SECTION 917. TEMPORARY CEASE-AND-DESIST ORDER RELATING TO BOOKS AND RECORDS

A Federal banking agency may issue a temporary cease-and-desist order whenever it determines that an insured financial institution's books or records are so incomplete or inaccurate that the agency cannot, through normal supervisory practice, determine the institution's financial condition or the details or purpose of any transaction that may adversely affect the institution's financial condition.

Temporary cease-and-desist orders are subject to judicial review under the "arbitrary and capricious" standard.

SECTION 918. REMOVAL ORDERS

Current law permits the Federal banking agencies to remove officers and directors of insured banks, but not other parties. Different removal provisions apply, depending upon whether the misconduct occurred at the bank that currently employs the individual (section 8(e)(1) of the FDI Act), or at another institution or business enterprise (section 8(e)(2)). These provisions essentially require a showing that: (1) the party has violated a law, rule, regulation, or cease-and-desist order, has engaged or participated in an unsafe or unsound practice, or has breached a fiduciary duty; and (2) the institution has suffered or will probably suffer *substantial* financial loss or could be *seriously* prejudiced because of that violation or practice, or the individual has received financial gain through that practice; and (3) the violation or practice involves personal dishonesty or demonstrates a willful or continuing disregard for the financial institution's safety and soundness.

The bill unifies the removal provisions to establish a single standard regardless of whether the misconduct occurs at the institution that currently employs the individual or at another institution. To be removed under the new standard:

> (1) an institution-related party must have (a) violated a law, rule, regulation, final order, or written agreement with a Federal banking agency, (b) engaged in or participated in an unsafe or unsound practice, or (c) breached a fiduciary duty;
>
> (2) (a) the institution must have suffered or be likely to suffer financial loss or prejudice to its depositors' interests, or (b) the party must have received financial gain through his or her violation, practice, or breach; and
>
> (3) The party's conduct must have (a) involved personal dishonesty, or (b) demonstrated willful or continuing disregard for the safety and soundness of the institution.

The new removal provision will apply to all institution-related parties, not just officers and directors. An individual removed from one institution could not, without the prior consent of the agency that issued the removal order, become an institution-related party at any other federally insured depository institution. This section deletes the adjectives "seriously" and "substantial," highlighted above. Finally, it clarifies that actions taken either directly or indirectly by an institution-related party may be grounds for removal.

SECTION 919. TEMPORARY SUSPENSION ORDERS

Section 8(e)(4) of the FDI Act authorizes the Federal banking agencies to issue a temporary removal or suspension order if necessary for the protection of the bank or the interests of its depositors. This section of the bill makes certain conforming amendments to section 8(e)(4), allows those orders to be issued against all institution-related parties, and deletes certain obsolete terminology.

SECTION 920. EFFECT OF SUSPENSION OR REMOVAL

Section 8(j) of the FDI Act makes it a crime for an individual who is subject to a temporary or permanent suspension or removal order to vote for a director or serve as a director, officer, or employee of any bank, bank holding company, or Edge Act corporation without prior written approval from the appropriate Federal banking agency.

This section of the bill provides that a person removed or suspended from any one bank, bank holding company, subsidiary of a bank, or an Edge Act or Agreement corporation is also automatically removed or suspended from all other insured institutions, bank holding companies, savings and loan holding companies, farm credit banks, credit unions, and any subsidiaries of any insured financial institutions, unless the defendant has received prior written approval from the agency that issued the removal order. If the defendant is an employee of a business organization, such as an accounting firm or law partnership, the suspension or removal order will affect only the individual involved unless the appropriate Federal regulatory agency specifies that it should apply to the employing company or firm.

SECTION 921. CIVIL MONEY PENALTIES

A. In General

Currently, civil money penalties generally may not exceed $1,000 per day. For violations of reporting requirements, penalties may not exceed $100 per day; for willful violations of the Change in Bank Control Act, $10,000 per day, with the defendant entitled to a full evidentiary trial in a U.S. district court before any penalty may be collected.

This section generally increases civil penalties to a maximum of $25,000 per day. If a violation is made with reckless disregard for the safety and soundness of the financial institution, the new maximum penalty will be $1 million per day. A civil money penalty may be imposed for violating any law, regulation, final order, or any condition imposed in writing in connection with the granting of any application or other request. In addition, a civil money penalty may be assessed for breaching any fiduciary duty if the breach results in a financial loss to the institution or pecuniary gain to the defendant. In determining penalty amounts, the agencies must consider the appropriateness of the penalty in view of the defendant's financial resources and good faith, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

B. Limitation on Penalties for De Minimis Violations

Notwithstanding the general increase in maximum civil money penalties, this section limits civil money penalties for minor violations to $2,500 per day. The $2,500-per-day limit does not apply if the appropriate agency finds that the violation (1) caused or is likely to cause a serious financial loss to the institution or the insurance fund, (2) evidenced reckless disregard for the safety or soundness of the financial institution, (3) resulted from gross negligence, (4) was part of a pattern of violations, or (5) enriched the defendant.

SECTION 922. CRIMINAL PENALTIES FOR VIOLATION OF REMOVAL OR SUSPENSION ORDERS

Under current law, any person who participates in the affairs of the bank from which he has been removed or suspended, or who, without prior approval from the appropriate agency, votes for a director or serves or acts as a director, officer, or employee of any other bank, may be fined up to $5,000, imprisoned for up to one year, or both.

This section provides that any person subject to a suspension or removal order who participates in the affairs of *any* insured depository institution may be fined up to $1 million per day, imprisoned for up to five years, or both.

SECTION 923. DEFINITIONS

A. Appropriate Federal Regulatory Agency

"Appropriate Federal regulatory agency" is defined to include the appropriate Federal banking agency, the National Credit Union Administration Board (in the case of an insured credit union), and the Farm Credit Administration (in the case of institutions chartered under the Farm Credit Act).

B. Order Which Has Become Final

The Federal Deposit Insurance Act currently defines an "order which has become final" as an order not subject to further *judicial* review. The bill changes the definition so that an "order which has become final" is one not subject to further *administrative* review. This change will enable agencies to assess civil money penalties for violations of orders, and obtain injunctive relief, at an earlier stage in the regulatory process.

C. Controlling Shareholder

"Controlling shareholder" is defined as a person that directly or indirectly, or acting through or in concert with one or more persons, owns or controls a insured financial institution. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual.

D. Additional Terms

Each appropriate Federal banking agency may, by regulation, define terms not otherwise defined.

SECTION 924. EMPLOYMENT PROTECTION

This section forbids a federally insured financial institution or holding company to discharge or discriminate against any officer, director, or employee with respect to compensation, or terms or conditions of employment because of information provided by that person to a regulatory authority or the Department of Justice relating to a possible violation of any law or regulation by the institution or an institution-related party. These protections do not apply to an individual who has deliberately caused the alleged violation.

SECTION 925. COORDINATION WITH COSA

This section permits the FDIC to recommend that COSA take enforcement action against any savings association. If COSA fails to take such action or to provide an acceptable plan to resolve the FDIC's concerns within 60 days, the FDIC may take the action itself if it determines that the institution is in an unsafe and unsound condition, or that unsafe or unsound practices will continue unless the FDIC takes the recommended action. In exigent circumstances, the FDIC may act before the 60-day period expires.

SECTION 926. EFFECT ON OTHER AUTHORITY

Section 926 provides that the authority granted to the Federal banking agencies under section 8 of the Federal Deposit Insurance Act shall be in addition to, and not restricted by, any other authority provided by Federal or State law.

SECTION 927. NONDELEGABILITY

Any decision by the FDIC to terminate or suspend insurance under section 8(a) of the FDI Act, or to initiate an enforcement action against a savings association under section 8(v) of that Act, must be made by the FDIC Board of Directors, and may not be delegated.

SECTION 928. EFFECT OF RESIGNATION OF INSTITUTION-RELATED PARTY

In *Stoddard v. Federal Reserve Board,* 868 F.2d 1308 (D.C. Cir. 1989), the court of appeals held that a Federal banking agency lacked authority to bring a removal action against an individual who had resigned just before removal proceedings were initiated. The court reasoned that the agency could not remove an individual who was not participating in the affairs of the institution. But removal also bars the defendant from future involvement in any insured financial institution. The court's decision would allow an individual to escape this bar merely by resigning just before the removal notice is served. To remedy this problem, this section provides that the jurisdiction and authority of the Federal banking agencies will not be affected by the resignation, termination of employment, or other separation of the party involved. This retention of authority will apply to all matters pending when the bill becomes law, whether or not formally commenced.

SECTION 929. PENALTY FOR PARTICIPATION

Currently, except with the prior written consent of the FDIC, no person may serve as a director, officer, or employee of an insured bank who has been convicted of any criminal offense involving dishonesty or a breach of trust. A bank that willfully violates this provision may be fined up to $100 per day. This section deletes the "willful" standard and instead provides that for each "knowing" violation of this provision, the financial institution and individual involved may be fined up to $1 million per day. This section also provides a criminal fine of the same amount and imprisonment for up to five years. Finally, the amended prohibition will bar such an individual from serving as an institution-related party—thus making the prohibition broader than under current law.

SECTION 930. PARALLEL INCREASES IN CIVIL PENALTIES

This section increases the maximum civil penalties in other banking statutes so that they parallel those in section 8 of the FDI Act.

SECTION 931. PENALTY FOR VIOLATION OF CHANGE IN BANK CONTROL ACT

Current law permits the agencies to assess a civil penalty of up to $10,000 per day for *willfully* violating the Change in Bank Control Act. The agencies may collect the fine only after a *de novo* evidentiary trial at the district court level. This section eliminates the right to such a trial and the requirement that violations be "willful." It also increases the maximum civil penalties to conform to the other civil money penalty provisions of the bill.

SECTION 932. REPORTS

Current law requires banks to make periodic reports on their security devices and procedures. It also requires national banks to file call reports within 10 days of a "call." Penalties of $100 per day may be assessed for late call reports and similar reports filed by State banks and bank holding companies.

This section repeals the requirement for periodic reports on security devices and procedures. It also eliminates the requirement to file call reports within 10 days of the request, and instead requires that such reports be filed within the time specified by the regulator.

This section provides civil penalties of up to $25,000 per day for filing late reports or filing any false, misleading, or incomplete report. If the violation results from reckless disregard for the safety or soundness of the institution, the civil penalty may be up to $1 million per day. Fines for minor violations of this requirement will, however, be limited to $2,500 per day (pursuant to section 8(i)(2)(B) of the FDI Act, as added by section 921 of the bill).

In assessing penalties under these provisions, the agencies must consider the appropriateness of the penalty in view of the defendant's financial resources and good faith, the gravity of the violation, any history of previous violations, and such other matters as justice may require.

Subtitle B—Regulation by COSA

SECTION 941. REPORTS OF CONDITION AND PENALTIES

This section of the bill adds a new statutory provision requiring savings associations to file reports of condition with COSA. COSA may impose civil penalties of up to $25,000 per day on any association that fails to submit such a report within the time specified by COSA, or that files a false, misleading, or incomplete report. If the violation results from reckless disregard for the safety or soundness of the institution, the civil penalty may be up to $1 million per day. In assessing penalties under this provision, COSA must consider the appropriateness of the penalty in view of the defendant's financial resources and good faith, the gravity of the violation, any history of previous violations, and such other matters as justice may require. Fines for minor violations of this provision will be limited to $2,500 per day (section 8(i)(2)(B) of the FDI Act, as added by section 921 of the bill).

SECTION 942. CONTINUITY OF AUTHORITY FOR PENDING LITIGATION

All litigation to which the Bank Board or FSLIC is a party when the bill becomes law shall be continued after the date of enactment by COSA, the FDIC, or the Federal Home Loan Bank Agency, as may be appropriate.

SECTION 943. EXTENSION OF AUTHORITY

COSA may continue any administrative proceeding initiated before the bill becomes law, or any administrative enforcement action taken before enactment under a provision of law repealed by the bill, as if that provision remained in effect. Any person subject to an order or condition issued by FSLIC or the Bank Board shall remain subject to that order or condition.

Subtitle C—Credit Unions

Sections 951–969 of the bill change the enforcement powers of the National Credit Union Administration Board ("NCUA Board") over insured credit unions to make those powers and the corresponding penalties equivalent to the powers and penalties applicable to insured banks.

Section 970 requires the NCUA Board, within 120 days after the bill becomes law, to prescribe audit standards requiring every insured credit union to be audited by an independent certified public accountant for any fiscal year in which the credit union: (1) has not conducted an annual supervisory-committee audit; (2) has not received a complete and satisfactory supervisory-committee audit; or (3) has had persistent and serious recordkeeping deficiencies, as determined by the NCUA Board. The failure of any insured credit union to obtain an independent audit required by this section will constitute an unsafe or unsound practice.

SUBTITLE D—RIGHT TO FINANCIAL PRIVACY

SECTION 981. AMENDMENT TO RIGHT TO FINANCIAL PRIVACY ACT

The Right to Financial Privacy Act generally prohibits Government access to financial records held by a financial institution unless the customer consents to the release of his or her records, or the release of the records falls within one of the exceptions in the Act. For example, one exception permits disclosure of financial records to a supervisory agency in the exercise of its supervisory, regulatory, or monetary functions.

A. Definitions

Subsection (a) amends the definition of a "supervisory agency" to make clear that it includes agencies that supervise the activities of a financial institution holding company and any subsidiary of a financial institution or financial institution holding company. It also makes clear that a "supervisory agency" also includes any agency that has statutory authority to examine the financial condition, business operations, or records or transactions of an insured financial institution.

B. Exceptions

Subsection (b) amends the exception that permits disclosure of financial information to a supervisory agency in the course of its supervisory, regulatory, or monetary functions to similarly permit disclosure to a supervisory agency in the course of its receivership and conservatorship functions. The subsection makes clear that the exception applies whenever a supervisory agency exercises its supervisory role with respect to an institution or any institution-related party. The subsection also excepts from the Right to Financial Privacy Act any disclosure of financial records or information to employees or agents of the Federal Reserve Board or any Federal reserve bank made in connection with an extension of credit by the Federal Reserve System to depository institutions or others. Finally, the subsection similarly excepts the disclosure of financial records and information to employees and agents of the Resolution Trust Corporation in connection with the exercise of its conservatorship, receivership, or liquidation functions.

C. Grand Jury Information

Subsection (c) prohibits a financial institution from notifying a customer or any other party that a grand jury has subpoenaed a customer's records in connection with a possible violation of certain financial institution related criminal provisions. Violation of this prohibition may result in a criminal fine of up to $5,000, imprisonment for up to five years, or both.

TITLE X—CRIMINAL ENHANCEMENTS

SECTION 1001. INCREASED CRIMINAL PENALTIES AND CIVIL PENALTIES FOR CERTAIN FINANCIAL INSTITUTION OFFENSES

A. Increased Criminal Penalties

This section increases the criminal sanctions for several major financial institution crimes in title 18, United States Code. The crimes covered are: section 215 (financial institution bribery); sections 656 and 657 (financial institution misapplication and embezzlement); sections 1005 and 1006 (false entries on the books of financial institutions); sections 1007 and 1008, now consolidated as section 1007 (fraud on deposit insurer); section 1014 (false statement or overvaluation); and section 1344 (financial institution fraud). Maximum criminal penalties are increased to a $1,000,000 fine, fifteen years imprisonment, or both. If a higher fine is appropriate, a court may use section 3571(d) of title 18 to set the fine at twice the amount of pecuniary gain to the defendant or loss to the affected financial institution, whichever is greater.

B. Civil Penalties

This section for the first time authorizes the Civil Division of the Justice Department and the U.S. attorneys' offices to seek civil penalties for the financial institution crimes listed above. This new authority gives the Justice Department flexibility to proceed either civilly or criminally (or both) on matters referred by a bank regulatory agency. The Justice Department may also develop cases civilly or criminally (or both) without a referral (e.g., by using information from an informant). The new authority provides an additional means of assessing penalties; it does not limit penalties that may otherwise be imposed by the bank regulatory under their own authority. If a civil penalty is assessed but not paid, the Attorney General may recover the penalty through an action in Federal district court.

The civil penalties provided by this section for violations of sections 656, 657, 1005-07, 1014, and 1544 of title 18 may be up to $1,000,000 for each day the violation continues, or up to $5,000,000, whichever is greater. The civil penalty for violating section 215 is up to $1,000,000 or the value of the thing offered or solicited, whichever is greater.

The Justice Department may develop civil cases through new civil summons powers provided by this section, comparable to the civil summons powers of numerous other agencies with civil penalty authority. The powers include standard summons enforcement provisions, including contempt authority.

C. Statute of Limitations

Subsection (j) adds a new statute of limitations provision, section 3293 of title 18, which temporarily extends to 10 years the statute of limitations for the crimes covered by section 1001 (sections 215, 656, 657, 1005, 1006, 1007, 1008, 1014, and 1344 of title 18). After January 1, 1995, the statute of limitations will be reduced to seven years. This gives the Government until the end of 1994 to prosecute offenses occurring on or before December 31, 1987. Offenses occurring after that date would have to be prosecuted within seven years. Currently, the general five-year statute of limitations for all crimes listed in section 3282 of title 18 applies. The temporary extension to 10 years recognizes both the complexity of many of the investigations under these provisions and the volume of such investigations pending and anticipated in the near future. The permanent extension of the statute of limitations for these crimes to seven years reflects the need for a longer period to uncover and prosecute such offenses.

The lengthened limitation periods apply retroactively to any offense committed before the bill becomes law, so long as the five-year statute has not run as of that date. It is well established that the application of a new statute of limitations to crimes for which the old statute has not run does not violate the constitutional prohibition on *ex post facto* laws. *See, e.g., United States v. Richardson*, 512 F.2d 105 (3d Cir. 1975).

D. Sentencing

Pursuant to the Sentencing Reform Act of 1984, sentences for all crimes committed or completed on or after November 1, 1987, must accord with the sentencing guidelines promulgated by the U.S. Sentencing Commission. Subsection (k) relates to the sentencing guidelines for violations of nine criminal statutes: sections 215, 656, 657, 1005, 1006, 1007, 1008, 1014, and 1344 of title 18.

Subsection (k) states that additional, substantial periods of imprisonment should be imposed when violations of those sections jeopardize the safety or soundness of a financial institution. The subsection does not refer to a specific offense level, in deference to the view of some Members of Congress that the Sentencing Commission can best establish consistency in sentencing if Congress does not assign specific numerical values in its instructions to the Commission when enacting or amending criminal statutes.

The new language makes clear, however, that the Commission should include specific offense characeristics in its guidelines for those offenses. These provisions should substantially lengthen the incarceration of defendants who jeopardize the safety and soundness of financial institutions. The amended guidelines should take into account the fact that an offense was committed against a federally insured financial institution, the potential effect on the community being served by the financial institution, the amount of loss caused by the offense, and the effect on the financial community.

While the bill was pending, the Sentencing Commission considered amending the guidelines pursuant to section 994(p) of title 28, United States Code, to increase the punishment for defendants convicted of financial institution fraud. If the guidelines are amended to ensure that defendants who jeopardize the safety and soundness of a financial institution receive a substantial period of incarceration in addition to the period that can generally be imposed for the underlying fraud, no further Commission action may be necessary.

SECTION 1002. MISCELLANEOUS REVISIONS TO TITLE 18

Subsection (a) of this section replaces "Federal Home Loan Bank Board" with "Chairman of the Office of Savings Associations" in title 18, consistent with other provisions of the bill.

Subsections (b) and (c) extend sections 212 and 213 of title 18 (relating to gratuities and loans to bank examiners) to examiners of COSA, and change the references to FDIC-insured "banks" to FDIC-insured "financial institutions."

Subsection (d) repeals section 1009 of title 18, which currently makes it a crime to circulate rumors about FSLIC.

Subsections (e), (f), (g), and (j) make technical revisions to four criminal provisions necessitated by this Act, such as deleting references to FSLIC.

Subsection (h) amends the obstruction-of-justice statute, making it a crime for a financial institution, or any officer, director, partner, or employee of a financial institution to notify a customer or any other party, including another financial institution insider, of the existence or contents of a grand jury subpoena relating to one of the financial institution crimes discussed above in connection with section 1001 (sections 215, 656, 657, 1007, 1008, 1014, or 1344 of title 18).

Subsection (i) makes several financial institution crimes predicate offenses for violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"): section 215 (relating to the receipt of commissions or gifts for approving loans); sections 656 and 657 (financial institution misapplication and embezzlement); sections 1004, 1005, 1006, 1007, 1014 (relating to fraud and false statements); and 1344 (financial institution fraud).

SECTION 1003. CIVIL AND CRIMINAL FORFEITURE

Section 1003 adds civil (new section 983) and criminal (new section 984) forfeiture authority to title 18 for use in connection with the financial institution offenses discussed above in connection with section 1001 of the bill.

Civil forfeiture will allow the Department of Justice to move immediately against the proceeds of a violation or against property traceable to those proceeds as soon as the Department has probable cause. Because of the nature of the crimes and the victims, forfeited amounts will, after deduction of forfeiture costs, be applied differently than forfeitures under other provisions of law. If the affected institution is in receivership, section 983(e)(3) requires that the proceeds of the forfeiture be deposited in the Treasury's General Fund. If the institution is not in receivership, new section 983(e)(4) requires that the proceeds be deposited in the General Fund, or at the option of the appropriate Federal banking agency, be paid as restitution to the institution. As with other victim restitution, the amount received through the forfeiture would, under section 3523 of title 18, be deducted from other amounts received as restitution in other civil actions or through cease-and-desist orders.

Criminal forfeiture would be mandatory following a conviction—unlike orders for victim restitution, which are discretionary. The proceeds of such a criminal forfeiture would be applied in the same way as the proceeds of a civil forfeiture.

SECTION 1004. GRAND JURY AMENDMENTS

Subsection (a) amends rule 6(e) of the Federal Rules of Criminal Procedure to overcome impediments to the Government's civil enforcement efforts resulting from two decisions of the United States Supreme Court. In *United States v. Sells Engineering, Inc.,* 463 U.S. 418 (1983), the Court ruled that Justice Department attorneys handling civil cases are not "attorneys for the government" for purposes of rule 6(e). Thus such attorneys need a court order to obtain grand jury materials pertaining to their civil cases. Such an order may be granted only upon a showing of "particularized need." In a companion case, *United States v. Baggot,* 463 U.S. 476 (1983), the Court narrowly defined the purpose for which disclosure may be made. It held that agency proceedings such as civil tax audits are not "preliminary to a judicial proceeding," and thus no court order may be secured in such cases, no matter how compelling the need.

This section (1) permits prosecutors to automatically disclose grand jury materials to Justice Department civil attorneys for civil purposes without a court order; (2) expands the types of proceedings for which other departments and agencies may gain court-authorized disclosure to include not only "judicial proceedings" but also other matters within their jurisdiction, such as adjudicatory and administrative proceedings; and (3) reduces the "particularized need" standard for court-authorized disclosure to a lesser standard of "substantial need" in certain circumstances. The amendments also codify that a criminal prosecutor who conducts a grand jury investigation may present a companion civil case.

Amended rule 6(e)(3)(A)(i) permits disclosure to any Government attorney (e.g., Department of Justice attorney) "to enforce Federal criminal or civil law." This includes civil enforcement in all noncriminal actions to which the United States is a party, such as civil claims against bank directors and officers under section 1001 of the banking laws. Disclosure is not limited by the term "judicial proceeding," but can be made for the sole purpose of an initial review of potential civil liability, or to facilitate global dispositions of cases.

The amendment covers disclosures only to attorneys and their support staff such as secretaries and paralegals. Further disclosures to non-attorney personnel such as examiners, auditors, or agents will require a court order.

The words "civil law" in amended rule (6)(e)(3)(B) permit personnel to whom disclosure has been made for criminal purposes under subparagraph (A)(ii), to use the disclosed material to assist any attorney for the Government in enforcing civil law. It will allow the Justice Department's civil attorneys to discuss the evidence without court order not only with the criminal prosecutor but also with the agents, auditors, or examiners who worked on the grand jury investigation.

Before this section was passed, the Department of Justice assured the Senate that it intended to issue policy guidelines that restate current practices and case law to the effect that a grand jury may not be improperly used to gather evidence for civil purposes. The guidelines will state that the criminal prosecutor has discretion to decide whether and when to disclose materials to civil attorneys, and what materials should be disclosed. Disclosures will be limited to those materials relevant to the civil case.

Rule 6(e)(3)(C)(i) is amended by adding the words "particularized need" to reflect the current standard for court-authorized disclosures preliminary to or in connection with a judicial proceeding. The addition does not change current law, but demonstrates the contrast between this higher standard and the lesser standard of "substantial need" required in new subparagraph (C)(v), applicable when Government agencies seek disclosure with the concurrence of the Department of Justice. Rule 6(e)(3)(C)(i) will provide the only method of disclosure available to private parties. It can also be used by Government agencies with independent litigating authority when the Justice Department exercises its discretion and declines to request disclosure.

New rule 6(e)(3)(C)(v) authorizes prosecutors to seek court approval to release grand jury information to a Government agency for use in matters within the agency's jurisdiction. This is intended to eliminate the requirement that court-authorized disclosure be for use in a "judicial proceeding," and also to reduce the "particularized need" standard to a "substantial need" standard.

Under the substantial need standard, a court could consider a number of factors, such as: (1) the public interest served by disclosure—particularly the protection of the public health or safety or the safety or soundness of a federally insured financial institution; (2) the burden or cost of duplicating the grand jury investigation; (3) the possibility that witnesses may not be available; (4) whether the department or agency already has a legitimate independent right to the materials; (5) avoiding needless inefficiency or waste of resources; (6) the need to prevent ongoing violations of law; and (7) the expiration of any applicable statute of limitations. In weighing these considerations, a court could not deny disclosure merely because the agency for which disclosure is sought may have alternative discovery tools available to it.

On the other hand, the "substantial need" test does not contemplate that a court would simply rubber stamp the Government's request for disclosure. Review under the standard should require a Justice Department attorney to make more than a showing of mere convenience or simple relevance to matters within the agency's jurisdiction.

The phrase "for use in relation to any matter within the jurisdiction of such department or agency" makes clear that an agency's administrative, enforcement, and other non-judicial proceedings are included among those that may warrant disclosure. Because the phrase "matters within the jurisdiction of an agency" has been broadly interpreted in cases involving section 1001 of title 18, it was used here to avoid listing every conceivable agency proceeding. In the context of administrative and enforcement actions involving financial institutions, it could include use in licensing, examination, applications involving change in control or ownership, removal actions, cease-and-desist orders, termination of insurance, receivership actions, or penalty assessments.

Courts should retain effective control of grand jury disclosure by permitting it only when an agency shows substantial need, and by delineating in their disclosure orders the specific purposes for which disclosure is authorized. Department of Justice attorneys should not seek disclosure without being convinced that there is a strong public interest for each disclosure. Agency personnel who receive court-authorized disclosure of grand jury materials under this subparagraph may use the material only for the purpose for which the court order was granted.

Subsection (c) amends the Fair Credit Reporting Act to permit access to consumer credit report records pursuant to a subpoena issued by a grand jury. The Act currently forbids a credit-reporting agency from furnishing such records except in a few restricted instances. One of these is "in response to the order of a court." Although some district courts have held that a Federal grand jury subpoena is such an order, the predominant judicial view is that a grand jury subpoena does not qualify. *See, e.g., In re Application to Quash Grand Jury Subpoena,* 526 F. Supp. 1253 (D. Md. 1981).

SECTION 1005. LITIGATION AUTHORITY

This section affirms that the changes made by the bill in the responsibilities of Federal banking agencies do not affect the Attorney General's current authority under section 516 of title 28, to conduct and coordinate litigation on behalf of the United States Government.

SECTION 1006. DEPARTMENT OF JUSTICE APPROPRIATION

This section authorizes appropriations of $50 million annually for fiscal years 1989 through 1991 to investigate and prosecute financial institution crimes. This additional funding is authorized to be appropriated to the Attorney General to supplement funding included in the annual Department of Justice appropriations. The Department should treat these additional appropriations as additional funds, and should not use them to replace funds already drawn from other functions to investigate and prosecute crimes involving financial institutions. To achieve the objectives of the authorizations, the Attorney General may adjust the funding among the different organizations involved in investigating and prosecuting financial institution fraud, such as the Federal Bureau of Investigation, the U.S. attorney's offices, and the Criminal and Tax Divisions.

TITLE XI—FEDERAL HOME LOAN MORTGAGE CORPORATION

SECTION 1101. SHORT TITLE

This section designates this title as the "Federal Home Loan Mortgage Corporation Transition Act."

SECTION 1102. PURPOSES

This section sets forth the purposes of the title: to provide stability in the secondary market for home mortgages; to ensure that the Federal Home Loan Mortgage Corporation ("Freddie Mac") responds appropriately to the private capital market; and to ensure that Freddie Mac continues to provide liquidity for mortgage investments.

SECTION 1103. NEW BOARD OF DIRECTORS; INTERIM BOARD

Under current law, the members of the Federal Home Loan Bank Board also serve as Freddie Mac's board of directors. The Bank Board will be dissolved under section 301 of the bill.

A. New Board

In place of the Bank Board, this section establishes a new board of directors for Freddie Mac patterned after the board of the Federal National Mortgage Association ("Fannie Mae"). The new board will consist of 18 directors, of whom 13 will be elected annually by voting common stockholders and 5 will be appointed annually by the President. Of the presidential appointees, one must be from the homebuilding industry, one from the mortgage-lending industry, and one from the real-estate industry. Any director may be removed by the President for cause.

B. Interim Board

Until a new board of directors is elected, Freddie Mac will be governed by an interim board consisting of the President of Freddie Mac, and the persons serving as Chairman of the Federal Home Loan Bank Board and Secretary of Housing and Urban Development when the bill becomes law.

SECTION 1104. REGULATORY POWER

This section gives the Secretary of Housing and Urban Development general regulatory authority over Freddie Mac and authorizes the Secretary to prescribe such rules and regulations as he determines to be necessary and proper. Pursuant to his regulatory authority, the Secretary may, for example, (1) require that a reasonable portion of Freddie Mac's mortgage purchases further the national goal of providing housing for low- and moderate-income families, so long as those mortgages provide a reasonable economic return to Freddie Mac; (2) limit cash dividends on Freddie Mac's common stock based on Freddie Mac's current earnings and capital; (3) audit Freddie Mac's books and financial transactions; and (4) require Freddie Mac to report on its activities.

Without the Secretary's approval, Freddie Mac may not (1) issue stock or debt obligations convertible into stock, or (2) purchase, service, sell, lend on the security of, or otherwise deal in residential mortgages. The Secretary will be deemed to have approved all programs or activities involving purchasing, servicing, selling, lending on the security of, or otherwise dealing in residential mortgages by Freddie Mac on or before the effective date of this subsection; thus those transactions need not be submitted for his initial approval, although he will still have regulatory oversight and control over those activities.

When Freddie Mac seeks approval or other action from the Secretary pursuant to the Federal Home Loan Mortgage Corporation Act, the Secretary must within 45 days after receiving the request either grant the request or report to Congress why he has not done so.

This section specifies that Freddie Mac's debt-to-capital ratio may not exceed 15 to 1 without the Secretary's approval.

SECTION 1105. COMMON STOCK

Freddie Mac currently has no voting stock outstanding. The common stock, all nonvoting, may be held only by Federal home loan banks. The senior participating preferred stock is held by private investors. This section converts each outstanding share of senior participating preferred stock into a share of voting common stock.

SECTION 1106. FEES

This section specifies that Freddie Mac may not charge any mortgagee approved by the Secretary of Housing and Urban Development for participating in any mortgage insurance program under the National Housing Act, solely because of the Secretary's approval.

SECTION 1107. STANDBY CREDIT

This section permits the Secretary of the Treasury to purchase and sell Freddie Mac notes, debentures, bonds, or other obligations or securities. As the Secretary's purchase of such an instrument amounts to an extension of credit from the Treasury to Freddie Mac, such purchases may be made only to the extent approved in appropriations Acts, and the Secretary's holdings of such instruments may not exceed $2.25 billion at any given time.

SECTION 1108. TERMS OF OBLIGATIONS

A. Unsecured Debt Obligations

This section prohibits Freddie Mac from issuing any note, debenture, or substantially similar unsecured debt obligation without the approval of the Secretary of the Treasury. The Secretary will be deemed to have approved any such obligation with a maturity of one year or less that Freddie Mac has issued or is issuing when the bill becomes law, but will also be free to revoke the approval. A note, debenture, or substantially similar debt obligation with a maturity of more than one year that Freddie Mac has issued or is issuing when the bill becomes law will also be deemed approved, but that approval will expire 60 days after the bill becomes law.

B. Mortgage-Related Securities

This section prohibits Freddie Mac from issuing mortgage-related securities without the approval of the Secretary of the Treasury. Any such securities that Freddie Mac has issued or is issuing when the bill becomes law will be deemed approved.

SECTION 1109. COLLATERALIZED MORTGAGE OBLIGATIONS

This section provides that Freddie Mac may lend and make commitments to lend on the security of mortgages it is authorized to purchase. Freddie Mac is, however, prohibited from using that authority to originate mortgage loans or to make interim loans to sellers or originators of mortgages pending the sale of those mortgages in the secondary market.

A parallel statutory framework will apply to Fannie Mae.

TITLE XII—PARTICIPATION BY STATE HOUSING FINANCE AUTHORITIES AND NONPROFIT ENTITIES

SECTION 1201. DEFINITIONS

This section defines four terms used in title XII.

"State housing finance authority" means a public housing agency or an instrumentality of a State, or political subdivision of a State, that provides residential mortgage loan financing.

"Nonprofit entity" means any not-for-profit corporation chartered under State law, including a nonprofit corporation established by the National Corporation for Housing Partnerships.

"Mortgage-related assets" means residential mortgage loans secured by one-to-four family or multi-family dwellings and real property improved with such dwellings, in the jurisdiction of the pertinent State housing authority.

"Net income" means income remaining after all associated expenses have been deducted.

SECTION 1202. ACQUISITIONS BY STATE HOUSING FINANCE AUTHORITIES AND NONPROFIT ENTITIES

Section 1202 authorizes State housing finance authorities and nonprofit entities to purchase mortgage-related assets (1) from the Resolution Trust Corporation or (2) from financial institutions for which the FDIC is receiver or conservator. State authorities and nonprofit entities may purchase such assets without regard to any other provision of law. Contracts to purchase mortgage-related assets shall be effective according to their own terms without any further approval, assignment, or consent.

Any State authority or nonprofit entity that purchases mortgage-related assets must devote any net income received from such assets to providing low- and moderate-income housing within its jurisdiction.

TITLE XIII—STUDY OF FEDERAL DEPOSIT INSURANCE AND BANKING REGULATION

SECTION 1301. STUDY

This section requires a study of the Federal deposit insurance system by the Secretary of the Treasury in consultation with the Chairman of the Federal Reserve Board, the Comptroller of the Currency, the Chairman of the Federal Deposit Insurance Corporation, the Chairman of the Office of Savings Associations, the Chairman of the National Credit Union Administration, and the Director of the Office of Management and Budget.

SECTION 1302. TOPICS

This section specifies eight topics that the study required by section 1301 should include. In covering these topics, the study should describe and analyze the status quo and identify and evaluate possible reforms. The eight topics are (1) the risk and rate structure for deposit insurance; (2) incentives for market discipline, including supplementary private insurance; (3) the scope of deposit insurance coverage and its effect on the insurance fund, including possible co-insurance requirements for deposits of $10,000 to $100,000; (4) certain specific reform proposals, including market-value accounting, assessments on foreign deposits, additional limitations on brokered deposits and multiple insured accounts, and the addition of collateralized borrowing to the deposit insurance base; (5) policies for dealing with insured financial institutions that are insolvent or nearly insolvent; (6) examining managers of insured financial institutions on the principles and techniques of risk management; (7) the efficiency of housing subsidies through the Federal Home Loan Bank System; (8) whether insured credit unions and the National Credit Union Share Insurance Fund are adequately capitalized; and (9) whether supervision of the National Credit Union Share Insurance Fund should be separated from other functions of the National Credit Union Administration.

SECTION 1303. FINAL REPORT

This section requires the Secretary of the Treasury to submit a final report to Congress within 18 months after the bill becomes law. The final report should detail the findings and conclusions of the study required by this title, and set forth recommendations for administrative and legislative reform.

TITLE XIV—MISCELLANEOUS PROVISIONS

SECTION 1401. GAO STUDY OF THE CREDIT UNION SYSTEM

A. Study

Subsection (a) requires the Comptroller General of the United States to conduct a comprehensive study of the credit union system. The study must examine: (1) credit unions' present and future role in financial markets; (2) the financial condition of credit unions; (3) credit unions' capital; (4) credit union regulation and supervision at both the Federal and State levels; (5) the common-bond requirement; and (6) the structure and financial condition of the National Credit Union Share Insurance Fund, including whether supervision of the fund should be separated from other functions of the National Credit Union Administration Board. The Comptroller General should also examine such other related matters as he believes appropriate. The study should compare the regulation of credit unions with that of other financial institutions.

B. Submission

No more than 18 months after the bill becomes law, the Comptroller General must submit a report of the study required by subsection (a) to the House and Senate Banking Committees. The report must contain a detailed statement of findings and conclusions, including recommendations for such administrative and legislative action as the Comptroller General believes appropriate.

SECTION 1402. CREDIT UNION REGULATOR SALARIES

This section removes the limit on compensation paid to employees of the National Credit Union Administration Board. In fixing such compensation, the NCUA Board shall consult and seek to maintain comparability with compensation paid by the Federal banking agencies. The NCUA Board and the other agencies should use such flexibility not to enter into a bidding war for other agencies' employees, but rather for all agencies to maintain comparable compensation at levels sufficient to attract and retain employees with specialized expertise needed to make sure that federally insured depository institutions operate safely and soundly.

The salaries and expenses of the NCUA Board and its employees will be paid from fees and assessments levied on credit unions. These funds will not be treated as Government funds or appropriated monies, nor are they subject to apportionment.

SECTION 1403. AMENDMENT TO SECTION 203 OF THE FEDERAL CREDIT UNION ACT

This section amends section 203(b) of the Federal Credit Union Act by striking the words "deposits and."

SECTION 1404. COMPENSATION OF EMPLOYEES OF THE COMPTROLLER OF THE CURRENCY

This provision removes the limit on compensation paid to employees of the Office of the Comptroller of the Currency. In fixing such compensation, the Comptroller shall consult and seek to maintain comparability with the compensation paid by the other Federal banking agencies. The Comptroller and the other agencies should use such flexibility not to enter into a bidding war for other agencies' employees, but rather for all agencies to maintain comparable compensation at levels sufficient to attract and retain employees with the specialized expertise needed to make sure that federally insured depository institutions operate safely and soundly.

Whenever the Comptroller submits a budget estimate or request to any officer or employee in the executive branch, he shall concurrently transmit copies of that estimate or request to Congress. Whenever the Comptroller submits any legislative recommendation to the President or to the Office of Management and Budget, he shall concurrently transmit copies to Congress. No officer or agency may require the Comptroller to submit legislative recommendations or testimony to any other officer or agency for prior approval, comments, or review.

SECTION 1405. GAO AUDIT OF ALL ORGANIZATIONS CARRYING OUT FUNCTIONS UNDER THIS ACT

A. Entities Subject to GAO Audit

The Comptroller General is authorized to audit all agencies, corporations, organizations, and other entities that perform functions or activities under the bill with respect to those functions or activities. Similarly, the Comptroller is authorized to audit all persons and organizations that, by contract, grant, or otherwise, provide goods or services to, or receive financial assistance from, any entity performing functions or activities under the bill with respect to the provision of such goods and services or the receipt of such assistance.

B. GAO's Authority to Conduct Audits

Subsection (b) permits the Comptroller General to determine the nature, scope, terms, and conditions of audits conducted under this section. That authority supplements the Comptroller General's authority to conduct audits under other provisions of the bill and other laws.

C. GAO Access to Books and Records

The Comptroller General shall have access to—and may examine and copy all relevant records and property in the possession, custody, or control of—persons and entities subject to audit under this section. Section 716 of title 31, United States Code (relating to judicial enforcement of the Comptroller General's right of access to records and his duty to keep information confidential), applies to audits conducted under this section.

SECTION 1406. REPORTS ON LOAN DISCRIMINATION

The Secretary of Housing and Urban Development, the Comptroller of the Currency, the Federal Reserve Board, the FDIC, the NCUA, and COSA must each submit a report to Congress regarding discriminatory mortgage-lending practices within 60 days after the bill becomes law. Each report must contain findings on the extent of discriminatory lending practices by mortgage-lending institutions under the agency's regulation or supervision. The report by the Secretary of HUD may exclude information on mortgage lenders that are included in reports of the other agencies. Findings of each report under this section must be based on a review of currently available loan acceptance and rejection statistics. Each report must recommend appropriate measures to ensure nondiscriminatory lending.

SECTION 1407. EQUAL OPPORTUNITY

A. Equal Employment Opportunity

Subsection (a) broadens the scope of Executive Order 11478, which provides for equal employment opportunity in the Federal Government, to eight Federal agencies and other entities that perform functions or activities under the bill, namely: (1) the Comptroller of the Currency; (2) the Chairman of the Office of Savings Associations; (3) the Federal home loan banks; (4) the FDIC; (5) the Federal Home Loan Mortgage Corporation; (6) the Federal National Mortgage Association; (7) the Resolution Trust Corporation; and (8) the Resolution Finance Corporation.

B. Solicitation of Contracts

Subsection (b) requires the entities covered by subsection (a) to establish programs to encourage minority- and women-owned businesses to participate in their procurement activities. Procurement involves buying and contracting for goods and services required to carry out regular business activities. Certification requirements for minority- and women-owned businesses will follow the guidelines of the Small Business Administration. Programs established in accordance with this subsection must be consistent with prudent business practices. This section does not authorize setting aside fixed percentages of procurement contracts.

SECTION 1408. ANNUAL REPORT ON THE CONDITION OF THE FEDERAL DEPOSIT INSURANCE FUND

Beginning on January 31, 1990, the FDIC must report annually to the House and Senate Banking Committees on the condition of the Bank Insurance Fund and the Savings Association Insurance Fund. The report must evaluate the condition of the insurance funds in light of six economic factors: (1) the general level of interest rates; (2) the general volatility of interest rates; (3) the yield curve for United States Treasury obligations; (4) the spread between interest rates paid on Treasury obligations and those paid on obligations of insured financial institutions; (5) the default rate on outstanding loans held by insured institutions; and (6) the rate of prepayments on fixed- and variable-rate loans held by insured financial institutions.

The annual report must analyze in detail: (1) the current financial condition of the deposit insurance funds; (2) the current levels of the six economic factors; (3) each deposit insurance fund's exposure to losses, assuming no change in the economic factors; (4) each deposit insurance fund's exposure to losses under a range of reasonably possible changes in each of the economic factors, including the worst reasonable case scenarios for each economic factor and all factors combined; and (5) background information on historic levels and variations of the economic factors that show how the scenarios presented are reasonable.

SECTION 1409. UNIFORM ACCOUNTING AND CAPITAL STANDARDS

This section requires the Federal banking agencies to establish uniform accounting standards for determining capital ratios of all federally insured institutions and other regulatory purposes.

This section also requires each agency to report annually to Congress on any differences between the agency's capital standards and the capital standards of the different agencies. Their reports must explain the reasons for the discrepancies, and must be published in the Federal Register.

SECTION 1410. GROSS-MARKETING RESTRICTIONS ON COMPANIES CONTROLLING GRANDFATHERED NONBANK BANKS

A. Nonbank Banks

Section 4 of the Bank Holding Company Act generally restricts the activities of bank holding companies (i.e., companies that control banks) to (1) "banking or . . . managing or controlling banks," and (2) activities that the Federal Reserve Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." Thus bank holding companies generally cannot engage in commercial activities, and their financial activities must satisfy the "closely related" standard. Before the enactment of the Competitive Equality Banking Act of 1987 ("CEBA"), however, the Banking Holding Company Act defined a "bank" narrowly. Companies controlling banks that did not meet that narrow definition (so-called "nonbank banks") were not subject to the Act's restrictions. As a result, commercial companies could obtain control of FDIC-insured banks and engage directly or through subsidiaries in a wide range of activities impermissible for bank holding companies.

B. The Restrictions Imposed by CEBA On Cross-Marketing Through Affiliates

CEBA redefined "bank" and imposed restrictions on existing nonbanks in order to limit the competitive advantages companies controlling such grandfathered nonbank banks may enjoy over other bank holding companies. One of the restrictions, in section 4(f)(3)(B)(ii) of the Bank Holding Company Act, generally prohibits a grandfathered nonbank bank from allowing its products or services to be cross-marketed by or through an affiliate unless the affiliate engages only in activities permissible for a bank holding company.

C. What This Section Does

This section amends section 4(f)(3)(B)(ii) to permit an affiliate of a grandfathered nonbank bank to cross-market the bank's products or services with products or services of the affiliate permissible for a bank holding company, even if the affiliate also engages in activities impermissible for a bank holding company. For example, an affiliate engaged in insurance activities could not cross-market the nonbank bank's certificates of deposit with insurance policies that a bank holding company is not permitted to sell, but the affiliate could cross-market the certificates of deposit with credit-related insurance that a bank holding company may sell under section 4(c)(8).

SECTION 1411. APPRAISAL SUBCOMMITTEE

This section amends the Federal Financial Institutions Examination Council Act of 1978 by adding a new section 1010 creating an Appraisal Subcommittee and requiring the Federal financial institution regulatory agencies (the Federal Reserve Board, the Office of the Comptroller of the Currency, the FDIC, COSA, and the NCUA Board) to develop standards for the performance of appraisals.

A. Establishment of an Appraisal Subcommittee

This section requires the Federal Financial Institutions Examination Council to establish an Appraisal Subcommittee, composed of one representative from each Federal financial institution regulatory agency. Each representative on the Appraisal Subcommittee must be familiar with the appraisal profession.

The Appraisal Subcommittee will monitor: (1) State certification and licensing requirements for appraisers; (2) regulations of the Federal financial institution regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation (collectively the "Regulatory Agencies") that govern real-estate related financial transactions requiring the services of an appraiser ("Federally Related Transactions"); and (3) the practices, procedures, activities, and organizational structure of the Appraisal Foundation, a nonprofit organization created in 1987 to develop uniform appraisal standards and appraiser qualifications for State certification and licensing. The Appraisal Subcommittee must establish a national registry of State certified and licensed appraisers eligible to perform appraisals in Federally Related Transactions. No later than January 31 of each year, the Appraisal Subcommittee must report to Congress on its performance in carrying out its functions.

The Appraisal Subcommittee will be funded through a single $5 million appropriation, authorized under this section, covering the two years after the bill becomes law. Thereafter, the Appraisal Subcommittee will meet its expenses by assessing and collecting annual registration fees (up to $25) from State certified and licensed appraisers eligible to perform appraisals in Federally Related Transactions.

B. Promulgation of Appraisal Rules by Regulatory Agencies

Not later than one year after the bill becomes law, each of the Regulatory Agencies must adopt standards governing the performance of real-estate appraisals in Federally Related Transactions. The standards must be no less stringent than the generally accepted appraisal standards ("GAAS") established by the Appraisal Standards Board of the Appraisal Foundation. The standards may be more stringent than GAAS if the Regulatory Agency determines that higher standards are consistent with its statutory responsibilities.

The Regulatory Agencies must also adopt standards governing the types of Federally Related Transactions requiring the services of State certified or licensed appraisers. In adopting those standards, the Regulatory Agencies must consider whether transactions are, individually or collectively, of sufficient financial or public policy importance to the U.S. Government that a State certified appraiser must perform the appraisal. State certified appraisers must in any event perform appraisals of realproperty valued at $1 million or more. Appraisals that may be performed by State licensed appraisers may also be performed by State certified appraisers.

C. Establishment of Appraiser Qualifications

As a general rule, the Regulatory Agencies may accept the certifications and licenses granted by the appropriate State agencies. However, a Regulatory Agency may also impose additional certification criteria consistent with its statutory responsibilities.

State requirements for designating certified appraisers must meet minimum certification criteria established by the Appraiser Qualification Board of the Appraisal Foundation. These criteria include satisfactory completion of an examination equivalent to the Uniform State Certification Examination approved by the Appraiser Qualification Board.

The Appraisal Subcommittee must review certifications and licenses awarded by the States. The Subcommittee may refuse to recognize certifications and licenses granted by State agencies whenever the State agency: (1) has failed to adopt and enforce standards, qualifications, or procedures prescribed under this section; (2) lacks adequate authority to carry out its responsibilities; or (3) has failed to act decisively regarding appraisal standards, appraiser qualifications, or appraiser supervision, as required by this section. The Appraisal Subcommittee must establish procedures to notify State agencies of its determination not to recognize their certifications and licenses. These procedures must give the State agencies an opportunity to present information to contest the denial or correct the conditions that caused the Appraisal Subcommittee to deny recognition. Appraisal Subcommittee actions denying recognition are subject to judicial review.

After July 1, 1991, at the latest, all appraisals performed in connection with Federally Related Transactions must be performed by State certified or licensed appraisers in accordance with this section. The Appraisal Subcommittee may extend the effective date until December 31, 1991, with the approval of the Federal Financial Institutions Examination Council, if it finds that a State has made substantial progress in establishing a State certification and licensing system that meets the requirements of this section.

The Appraisal Subcommittee may, with the approval of the Federal Financial Institutions Examination Council, waive the requirement to use State certified and licensed appraisers when a shortage of certified or licensed appraisers exists or when compliance with the requirement would create inordinate delays in performing appraisals.

D. Penalties for Noncompliance

Financial institutions and other entities that knowingly employ an appraiser who is not certified or licensed in accordance with this section are subject to civil money penalties of up to $25,000 for a first violation and $50,000 for each subsequent violation. Civil money penalties may be imposed only after an administrative hearing conducted by a Federal financial institution regulatory agency or an appropriate State agency. All such civil money penalties are subject to judicial review.

E. Application of This Section to Other Federal Agencies

The Office of Management and Budget may require other Federal agencies and departments to comply with this section.

SECTION 1412. SENSE OF THE SENATE RESOLUTION REGARDING TAX PROVISIONS GOVERNING FDIC AND FSLIC ASSISTED TRANSACTIONS

This section sets forth the Senate's finding that special tax provisions applicable to FDIC and FSLIC resolution of troubled depository institutions constitute inherently inefficient subsidies and do not permit for a full accounting of the costs of financing those resolutions. This section expresses the sense of the Senate that the House of Representatives, which is constitutionally responsible for originating tax measures, should adopt and send to the Senate legislation that repeals certain tax preferences relating to such transactions. Repeal of those tax preferences would apply only to transactions on or after the date this bill becomes law.

SECTION 1413. STATUS OF CERTAIN THRIFT INSTITUTION

This section permits a particular savings association to convert from SAIF membership to BIF membership. In 1987, when CEBA first restricted conversions from FSLIC to the FDIC, a drafting error inadvertently removed an intended exception for that institution. This section corrects that error.

SECTION 1414. PASSIVE INVESTMENTS BY COMPANIES CONTROLLING GRANDFATHERED NONBANK BANKS

A. Current Restrictions on Acquiring Shares or Assets of Additional Banks or Thrift Institutions

Section 4(f)(2)(A) of the Bank Holding Company Act generally prohibits companies controlling grandfathered nonbank banks from directly or indirectly (1) acquiring control of any additional bank or thrift institution, or (2) acquiring control of more than 5 percent of the shares or assets of any additional bank or thrift institution. These two restrictions are intended to limit the competitive advantages companies controlling grandfathered nonbank banks may enjoy over other bank holding companies (discussed above in connection with section 1410).

Only one exception exists to the first of the two restrictions, section 4(f)(2)(A)(i) of the Act: a company controlling a grandfathered nonbank bank may, under certain emergency circumstances, acquire control of a failed or failing thrift institution. (This emergency acquisition authority is currently contained in section 408(m) of the National Housing Act. The bill repeals section 408(m), and replaces it with a new section 13(k) of the Federal Deposit Insurance Act.)

Five exceptions exist to the second restriction, section 4(f)(2)(A)(ii) of the Act, which prohibits acquisitions of more than 5 percent of the shares or assets of any additional bank or thrift instituion. These exceptions exclude shares or assets in the following categories when calculating compliance with the 5-percent restriction:

(1) shares acquired in a bona fide fiduciary capacity;

(2) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(3) shares held in an account solely for trading purposes (i.e., as a market-maker);

(4) loans or other accounts receivable acquired in the normal course of business; and

(5) shares or assets of a failed or failing thrift institution acquired under the emergency acquisition authority described above.

B. Changes Made by This Section

This section revises section 4(f)(2)(A)(ii) of the Act to clarify what conduct will and will not violate the 5-percent restriction. The section rephrases the current exception for fiduciary holdings and makes additional exceptions for independent fiduciaries, insurance companies, proxy solicitation, and debt collection. Exceptions (2) through (5) remain unchanged.

As under current law, the exceptions relate only to the 5-percent restriction; they do not affect the prohibition in section 4(f)(2)(A)(i) of the Act against acquiring *control* of any additional bank or thrift institution.

1. Shares held as a bona fide fiduciary

This section amends the current exception for fiduciary holdings, subclause (I) of section 4(f)(2)(A)(ii) of the Act, to specify that the exception will not be lost merely because the fiduciary has sole discretion to vote shares pursuant to its fiduciary obligations.

This section also rephrases subclause (I) for clarity. The subclause currently refers to shares "acquired in a bona fidefiduciary capacity," whereas the revised subclause refers to shares "held as a bona fide fiduciary." The use of "held" rather than "acquired" is consistent with the exceptions for shares held as an underwriter or market-maker, and makes clear that the exception does not apply in perpetuity merely because one *originally acquired* the shares as a bona fide fiduciary. Thus one who ceases to hold such shares as a bona fide fiduciary but continues to hold them in some other capacity may not avail himself of the exception. The use of "as a bona fide fiduciary" rather than "in a bona fide fiduciary capacity" emphasizes that the exception focuses on *acting* as a bona fide fiduciary rather than on mere fiduciary status. Thus, for example, the fiduciary must act solely in the interest of the beneficiaries rather than to aggrandize the company controlling the grandfathered nonbank bank.

2. Shares held by an Independent Fiduciary

The section adds a new subclause (II) to the Act to provide an exception for shares held by an independent party as a bona fide fiduciary solely for the benefit of employees of the company controlling the grandfathered nonbank bank, employees of the company's subsidiaries, or those employees' beneficiaries. The new exception responds to concern that the basic fiduciary exception in subclause (I) may not apply to shares held by an independent party. The language of subclause (II), like that of subclause (I), emphasizes that the fiduciary is to *act* as a bona fide fiduciary solely for the benefit of the employees and their beneficiaries (and not, e.g., to aggrandize the company controlling the grandfathered nonbank bank).

3. Shares held by Insurance Companies

This section adds a new subclause (VIII) to create an exception for insurance company subsidiaries of a company that controls a grandfathered nonbank bank. The exception cannot be used to hold more than 1 percent of any class of shares of a given bank or thrift institution. This limit prevents the exception from becoming an open-ended loophole through which the 5-percent restriction could be evaded merely by holding shares through one or more insurance companies.

4. Proxy solicitation

In addition to perpetuating the current exception for shares held as a market-maker, subclause (IV) provides that the 5-percent restriction is not violated merely by acquiring control of voting rights in the normal course of a proxy solicitation.

5. *Debt collection.*

Subclause (VI) provides an exception for shares or assets acquired in securing or collecting a debt previously contracted in good faith. The exception follows the model of section 2(a)(5)(D) of the Act.

SECTION 1415. SEPARABILITY OF PROVISIONS

This section specifies that the provisions of the bill are separable: should a court hold invalid any provision or the application of any provision to any person or under any circumstance, that holding will not affect the validity of any other provision or of any provision as it relates to any other person or under any other circumstance.

TITLE XV—GENERAL PROVISIONS

SECTION 1501. DISTRICT OF COLUMBIA CORRECTIONAL FACILITY

This section calls for the District of Columbia to construct an 800-bed prison expeditiously.